

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D80993
G/

_____AD3d_____

Submitted - May 6, 2026

ANGELA G. IANNACCI, J.P.
BARRY E. WARHIT
LILLIAN WAN
DONNA-MARIE E. GOLIA, JJ.

2024-04818

DECISION & ORDER

People of State of New York, respondent,
v Gabriel Kantrow, appellant.

Laurette D. Mulry, Riverhead, NY (Lisa Marcoccia of counsel), for appellant.

Raymond A. Tierney, District Attorney, Riverhead, NY (Kathleen Becker Langlan
and Lauren Tan of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Karen M. Wilutis, J.), dated June 3, 2024, which, after a hearing, designated the defendant a level two sexually violent offender pursuant to Correction Law article 6-C.

ORDERED that the order is modified, on the law and the facts, by deleting the provision thereof designating the defendant a level two sexually violent offender, and substituting therefor a provision designating the defendant a level two sex offender; as so modified, the order is affirmed, without costs or disbursements.

The defendant was convicted in Colorado of sexual exploitation of a minor (*see* Colo Rev Stat Ann § 18-6-403[3][b]). After a hearing conducted pursuant to the Sex Offender Registration Act (Correction Law art 6-C), the County Court designated the defendant a level two sexually violent offender. The defendant appeals.

The County Court properly assessed the defendant points under risk factors 3 and 7 of the risk assessment instrument, since the People established by clear and convincing evidence that the material possessed by the defendant depicted images of far more than three child victims and that the children in the images were strangers to the defendant (*see People v Gillotti*, 23 NY3d 841, 859-860; *People v Benchocron*, 226 AD3d 832, 833). Further, the court properly assessed 30 points under risk factor 5, as the People established by clear and convincing evidence that the defendant

July 1, 2026

Page 1.

possessed pornographic images displaying children 10 years old or younger (*see People v Butler*, 232 AD3d 683, 684; *People v Barry*, 213 AD3d 779, 779-780).

The County Court properly denied the defendant's application for a downward departure from his presumptive risk level. While an offender's response to treatment, if exceptional, can form the basis for a downward departure, the defendant failed to demonstrate by a preponderance of the evidence that his response to treatment was exceptional (*see People v Hammack*, 225 AD3d 795, 796; *People v Flores-Hernandez*, 219 AD3d 1533, 1534). Contrary to the defendant's contention, he failed to demonstrate how having support from his family established a lower likelihood of reoffense or danger to the community (*see People v Wanzer*, 218 AD3d 805, 806; *People v Gunter*, 217 AD3d 788, 790).

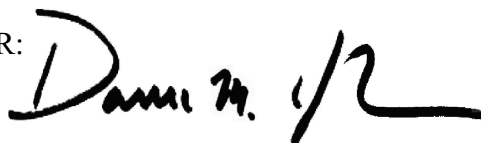
Moreover, although in some cases involving possession of child pornography the assessment of points under risk factors 3 and 7 can result in an overassessment of a defendant's level of risk (*see People v Gillotti*, 23 NY3d at 860), a downward departure was not warranted under the totality of the circumstances presented in this case, as there was no overassessment of the defendant's risk level (*see People v Walsh*, 247 AD3d 1073, 1074; *People v Benchocron*, 226 AD3d at 833).

However, as the People correctly concede, the defendant should not have been designated a sexually violent offender (*see People v Edwards*, 246 AD3d 37, 45). Accordingly, we modify the order to remove that designation.

The defendant's remaining contention is without merit.

IANNACCI, J.P., WARHIT, WAN and GOLIA, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a large, stylized flourish or checkmark.

Darrell M. Joseph
Clerk of the Court