

**Supreme Court of the State of New York**  
**Appellate Division, First Judicial Department**

Moulton, J.P., Pitt-Burke, O'Neill Levy, Michael, Chan, JJ.

6002

THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent,

Ind. No. 2741/16  
Case No. 2020-00298

-against-

DAVID GONZALEZ,  
Defendant-Appellant.

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Twyla Carter, The Legal Aid Society, New York (Robin Richardson of counsel), for appellant.

Alvin L. Bragg, Jr., District Attorney, New York (Claire Lynch of counsel), for respondent.

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Order, Supreme Court, New York County (Maxwell Wiley, J.), entered on or about October 23, 2019, which adjudicated defendant a level three sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court providently exercised its discretion in following the Board of Examiners of Sex Offenders' strong recommendation for an upward departure based on clear and convincing evidence of aggravating factors that were not otherwise adequately taken into account by the risk assessment instrument (*see People v Gillotti*, 23 NY3d 841, 861-862 [2014]). Even though defendant was assessed the maximum available points for his criminal history, this did not accurately reflect the extent and nature of that history, which included convictions for misdemeanor sex offenses and several violent felony convictions (*see e.g. People v Collins*, 127 AD3d 568, 568-569 [1st Dept

2015], *lv denied* 26 NY3d 901 [2015]). In addition, at the time of the underlying offense, defendant had already been adjudicated a level two offender, which did not prevent the instant conduct, demonstrating his high risk of sexual recidivism, and outweighing the mitigating factors that he cites (*see e.g. People v Faulkner*, 122 AD3d 539, 539 [1st Dept 2014], *lv denied* 24 NY3d 915 [2015]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 5, 2026

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first name "Susanna" and the last name "Rojas" being the most prominent parts.

Susanna Molina Rojas  
Clerk of the Court