

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

D12646  
A/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 10, 2006

HOWARD MILLER, J.P.  
GABRIEL M. KRAUSMAN  
ROBERT A. SPOLZINO  
MARK C. DILLON, JJ.

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2005-06552

DECISION & ORDER

People of State of New York, respondent,  
v Thomas S. Williams, appellant.

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Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, Newburgh, N.Y. (John Ingrassia and Kathleen V. Wells of counsel), for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Orange County (DeRosa, J.), dated June 6, 2005, which, after a hearing pursuant to Correction Law article 6-C, designated him a level three sex offender.

ORDERED that the order is affirmed, without costs or disbursements.

The County Court's determination to designate the defendant a level three sex offender is supported by clear and convincing evidence (*see* Correction Law § 168-n[3]). The County Court properly assessed 15 points for the defendant's history of alcohol abuse in light of the defendant's admissions, as reflected in the pre-sentence report, that he consumed a six-pack of beer before the commission of one of the offenses, had been drinking alcohol since he was 17 years of age, and had been able to consume up to three six-packs at a time (*see People v Perser*, 29 AD3d 767). He also ignored the advice of his therapist to stop drinking (*see People v Masters*, 19 AD3d 387). The defendant failed to present clear and convincing evidence of the existence of special

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circumstances to warrant a downward departure from the presumptive risk level (*see People v Davis*, 26 AD3d 364, 364-365; *People v Vaughn*, 26 AD3d 776, 776-777).

MILLER, J.P., KRAUSMAN, SPOLZINO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court