

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

D12939
Y/hu

_____AD3d_____

Submitted - October 16, 2006

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2005-03373

DECISION & ORDER

People of State of New York, respondent,
v Ivan Mason, appellant.

Del Atwell, East Hampton, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Steven A. Hovani of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Hinrichs, J.), dated March 11, 2005, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

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

Contrary to the defendant's contention, the Supreme Court's determination designating him a level three sex offender is supported by clear and convincing evidence (*see* Correction Law § 168-n[3]; *People v Maiello*, 32 AD3d 463; *People v Johnson*, 23 AD3d 635).

The defendant failed to present clear and convincing evidence of the existence of special circumstances to warrant a downward departure from his presumptive risk level as determined by the Risk Assessment Instrument (*see People v Davis*, 26 AD3d 364; *People v Masters*, 19 AD3d 387; *People v Williams*, 19 AD3d 388).

MILLER, J.P., GOLDSTEIN, SKELOS and FISHER, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 12, 2006

PEOPLE OF STATE OF NEW YORK v MASON