

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

D14048
C/hu

_____AD3d_____

Submitted - January 18, 2007

A. GAIL PRUDENTI, P.J.
GABRIEL M. KRAUSMAN
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-06844

DECISION & ORDER

People of State of New York, respondent,
v Salvatore Lorio, appellant.

Feldman and Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Andrew Fukuda of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Nassau County (Calabrese, J.), entered June 23, 2006, 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.

The County Court designated the defendant a level three sex offender based upon the existence of an overriding factor, namely, "a clinical assessment that the [defendant] has a psychological, physical, or organic abnormality that decreases his ability to control impulsive sexual behavior" (Sex Offender Registration Act: Risk Assessment Guidelines & Commentary [1997 ed.]; *see generally People v Scott*, 288 AD2d 763). Contrary to the defendant's contention, the court's determination was supported by clear and convincing evidence and, therefore, should not be disturbed (*see* Correction Law § 168-n[3]; *People v Davis*, 26 AD3d 364; *People v Hegazy*, 25 AD3d 675, 676; *People v Hines*, 24 AD3d 524). The defendant failed to present clear and convincing evidence of special circumstances warranting a downward departure from the presumptive risk level (*see*

February 27, 2007

Page 1.

People v Davis, supra; People v Ventura, 24 AD3d 527; People v Guaman, 8 AD3d 545).

PRUDENTI, P.J., KRAUSMAN, DILLON and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court