

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

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_____AD3d_____

Submitted - February 7, 2007

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2005-10491

DECISION & ORDER

People of State of New York, respondent,
v John Brister, appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III, of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marion M. Tang of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Weber, J.), dated September 22, 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.

The evidence submitted by the People at the hearing established, by clear and convincing evidence, the existence of facts sufficient to support the County Court's determination that the defendant should be classified as a level three sex offender (*see People v Morales*, 33 AD3d 982; *People v Hegazy*, 25 AD3d 675; *People v Burgess*, 6 AD3d 686). The case summary and risk assessment instrument prepared by the Board of Examiners of Sex Offenders, and the defendant's presentence report, established that the defendant had not accepted responsibility for his actions and was expelled from sex offender treatment (*see People v Morales, supra; People v Fortin*, 29 AD3d 765, *lv denied* 7 NY3d 712; *People v Mitchell*, 300 AD2d 377). Furthermore, the defendant

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admitted that he had been expelled from treatment. Consequently, the County Court properly assessed 15 points under the 12th risk factor (Acceptance of Responsibility).

In light of our determination, the defendant's remaining contention has been rendered academic.

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, 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