

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

D14334  
Y/hu

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

Submitted - February 9, 2007

STEPHEN G. CRANE, J.P.  
ANITA R. FLORIO  
STEVEN W. FISHER  
THOMAS A. DICKERSON, JJ.

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1999-05245

DECISION & ORDER

People of State of New York, respondent, v Justo  
Concepcion, appellant.

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Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Anthea H.  
Bruffee of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Knipel, J.), dated May 3, 1999, which, after a hearing (Dowling, J.), 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 finding, in effect, that, inter alia, the Board of Examiners of Sex Offenders correctly determined that he should be assessed 25 points as to item number two, 20 points as to item number three, 20 points as to item number four, and 30 points as to item number five, for a total of 95 points on those items, is supported by clear and convincing evidence (*see* Correction Law § 168-n [3]). The Supreme Court properly considered the grand jury testimony in making its determination (*see* Correction Law § 168-n[3]; *People v Awalt*, 17 AD3d 336; *People v Thomas*, 300 AD2d 379). This total of 95 points, combined with the total of 25 points from the uncontested items numbers one and nine, gives the defendant a total of 120 points. This is above the 110 points needed to designate the defendant as a level three offender, and there is no reason to deviate therefrom.

March 20, 2007

PEOPLE OF STATE OF NEW YORK v CONCEPCION

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In light of this determination, we need not reach the defendant's remaining contentions.

CRANE, J.P., FLORIO, FISHER and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court