

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

D14751
C/gts

_____AD3d_____

Submitted - March 12, 2007

ROBERT A. SPOLZINO, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
WILLIAM E. McCARTHY, JJ.

2005-07817

DECISION & ORDER

People of State of New York, respondent,
v Thomas Lovelace, appellant.

Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Anne Crick of counsel; Rian Silverman on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated May 27, 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 to designate him a level three sex offender is supported by clear and convincing evidence, including, inter alia, the complainant's grand jury testimony and other "reliable hearsay evidence" (Correction Law § 168-n[3]; see *People v Davis*, 26 AD3d 364; *People v Awalt*, 17 AD3d 336; *People v Thomas*, 300 AD2d 379). In determining the defendant's total risk factor score, the Supreme Court was not limited to the single charge of sexual abuse in the first degree to which the defendant pleaded guilty (see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 5 [1997 ed]),

April 17, 2007

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but could also consider other relevant facts supported by clear and convincing evidence (*see People v Saleemi*, 186 Misc 2d 177, 180).

SPOLZINO, J.P., GOLDSTEIN, FISHER 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