

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

D18263
X/kmg

_____AD3d_____

Submitted - February 1, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
JOSEPH COVELLO
RANDALL T. ENG, JJ.

2005-10227

DECISION & ORDER

People of State of New York, respondent,
v Edward Rouff, appellant.

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and Tammy Feman of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Margaret E. Mainusch and Jason P. Weinstein of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Nassau County (Kase, J.), dated September 20, 2005, which, after a hearing, designated him a level two 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 properly assessed him 20 points under risk factor number 4 (continuing course of sexual misconduct), based on clear and convincing evidence that the defendant engaged in several acts of sexual contact with the child victim over a period of approximately 2 years (*see People v Mingo*, _____AD3d_____, 2008 NY Slip Op 00092 [2d Dept 2008]; *People v Atkinson*, 34 AD3d 551; *People v Terdeman*, 175 Misc 2d 379, 382-384).

The defendant was also properly assessed 15 points under risk factor number 12, based on his failure to accept responsibility for the underlying offenses, coupled with his expulsion from a sex offender treatment program in 2001 (*see People v Lewis*, 37 AD3d 689; *People v Morales*, 33 AD3d 982). Moreover, the Supreme Court properly assessed 15 points under risk factor

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number 14 because of the defendant's unsupervised release from prison (*see People v Lewis*, 37 AD3d 689).

In light of the above, the defendant was properly designated a level two sex offender.

SKELOS, J.P., FISHER, COVELLO and ENG, 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