

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

D18288  
G/kmg

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

Argued - February 15, 2008

HOWARD MILLER, J.P.  
JOSEPH COVELLO  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

2005-11935

DECISION & ORDER

People of State of New York, respondent,  
v Joseph Villane, 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. (Morrie I. Klinbart and  
Lauren-Brooke Eisen of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated November 21, 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 Supreme Court providently exercised its discretion in upwardly departing from the defendant's presumptive sex offender level based upon clear and convincing evidence of aggravating factors of a degree not taken into account by the risk assessment instrument and the guidelines (*see People v Leibach*, 39 AD3d 1093; *People v Agard*, 35 AD3d 568). The defendant's remaining contentions need not be addressed in light of our determination (*see People v Turner*, 45 AD3d 747) and, in any event, are without merit (*see People v Johnson*, 47 AD3d 140; *People v Lawless*, 44 AD3d 738, *lv denied* 9 NY3d 816).

MILLER, J.P., COVELLO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

March 4, 2008

PEOPLE OF STATE OF NEW YORK v VILLANE