

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

D18454  
O/kmg

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

Submitted - February 11, 2008

REINALDO E. RIVERA, J.P.  
PETER B. SKELOS  
FRED T. SANTUCCI  
JOHN M. LEVENTHAL, JJ.

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2006-06348

DECISION & ORDER

People of State of New York, respondent,  
v Mustafa Abdul-Qawiyy, appellant.

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Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Anne Grady of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated November 6, 2006, which, after a hearing to redetermine the defendant's sex offender risk level pursuant to the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456), designated him a level three sex offender pursuant to Correction Law article 6-C .

ORDERED that the order is affirmed, without costs or disbursements.

A departure from the presumptive risk level is warranted where "there exists an aggravating or mitigating factor of a kind or to a degree, not otherwise adequately taken into account by the guidelines" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006 ed.]; see *People v White*, 25 AD3d 677; *People v Guaman*, 8 AD3d 545). Further, there must be clear and convincing evidence of the existence of a special circumstance to warrant any departure (see *People v Dexter*, 21 AD3d 403, 404). Here, the Supreme Court's determination to depart from the presumptive risk level and designate the defendant a level three sex offender was proper (see *People v James*, 45 AD3d 555, 556; *People v Buss*, 44 AD3d 634, 645; *People v Mudd*,

March 18, 2008

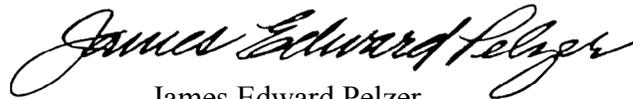
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43 AD3d 1128, 1129, *lv denied* 9 NY3d 817; *People v Kettles*, 39 AD3d 1270, 1271; *People v Wilkens*, 33 AD3d 399; *People v White*, 25 AD3d 677).

RIVERA, J.P., SKELOS, SANTUCCI and LEVENTHAL, 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