

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

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_____AD3d_____

Submitted - March 14, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2006-09157

DECISION & ORDER

People of State of New York, respondent,
v Michael Gochnour, 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. Kleinbart
of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rooney, J.), dated August 22, 2006, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

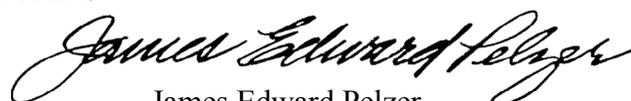
ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the defendant's contention, the Supreme Court properly assessed points for his failure to accept responsibility for his offense (*see People v Gonzalez*, _____AD3d _____, 2008 NY Slip Op 01011 [1st Dept 2008]; *People v Dubuque*, 35 AD3d 1011).

Furthermore, the defendant failed to show by clear and convincing evidence that there existed mitigating circumstances of a kind or to a degree not otherwise taken into account by the risk assessment instrument, which warranted a downward departure from his presumptive risk level designation (*see People v Marin*, _____AD3d_____, 2008 NY Slip Op 01318 [2d Dept 2008]; *People v Taylor*, _____AD3d_____, 2008 NY Slip Op 01731 [2d Dept 2008]; *People v Galligan*, 41 AD3d 683). Accordingly, the court providently exercised its discretion in designating him a level two sex offender (*id.*).

SKELOS, J.P., COVELLO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 8, 2008

PEOPLE OF STATE OF NEW YORK v GOCHNOUR