

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

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_____AD3d_____

Submitted - April 1, 2008

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-01263

DECISION & ORDER

People of State of New York, etc., respondent,
v Leonides Rivera, appellant.

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. (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Meyer, J.), dated January 9, 2007, 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 on appeal, there was clear and convincing evidence to support the assessment of 10 points for his failure to accept responsibility for his conduct (*see People v Mitchell*, 300 AD2d 377). Thus, he was properly designated a level two sex offender under the Sex Offender Registration Act (*see People v Adams*, 44 AD3d 1020; *People v Inghilleri*, 21 AD3d 404).

The defendant's contention that a discretionary downward departure to a level one sex offender status was warranted is not preserved for appellate review (*see People v Kelly*, 46 AD3d 790). In any event, the defendant failed to demonstrate by clear and convincing evidence that there existed a mitigating factor or factors of a kind or to a degree not otherwise taken into account by the guidelines that warranted a downward departure from his presumptive level two sex offender status (*see People v Adams*, 44 AD3d 1020; *People v Inghilleri*, 21 AD3d 404).

MASTRO, J.P., RITTER, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 6, 2008

PEOPLE OF STATE OF NEW YORK v RIVERA