

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

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_____AD3d_____

Submitted - April 14, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2006-01741

DECISION & ORDER

People of State of New York, etc., respondent,
v Doctor Washington, 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 Lauren Del Giorno of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Sullivan, J.), dated January 27, 2006, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the County Court, Nassau County, for a new hearing and determination in accordance herewith.

The County Court failed to make the findings of fact and conclusions of law required by Correction Law 168-n(3). The hearing court did not specify what factors it considered, nor which factors it determined to have been established, in reaching the level two determination. The record is not sufficient for this Court to make its own findings of fact and conclusions of law (*see People v Middleton*, 33 AD3d 777; *People v Villane*, 17 AD3d 336). The hearing court also failed to specifically determine the defendant's request for a downward departure (*cf. People v King*, 46 AD3d 529; *People v Kraus*, 45 AD3d 826).

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Under these circumstances, we remit the matter to the County Court, Nassau County, for a new hearing and determination. The County Court shall clearly indicate on the record its findings of fact and conclusions of law, including its determination of any request for a downward departure.

FISHER, J.P., COVELLO, ANGIOLILLO and BELEN, 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