

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

D19204
C/prt

_____AD3d_____

Submitted - April 11, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
JOHN M. LEVENTHAL, JJ.

2006-01842

DECISION & ORDER

People of State of New York, respondent,
v Wendell Patterson, 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. (Judith R. Sternberg and Valentina M. Tejera of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Brown, J.), dated February 1, 2006, 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 defendant's contention that the County Court erred in relying solely on the presumptive override for a prior felony sex offense conviction to find that he was a level three sex offender is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, the contention is without merit, as the record establishes that the County Court heard from the parties concerning the pertinent factors on the Risk Assessment Instrument prepared by the Board of Examiners, and ultimately adopted the Board's recommendation that there was no basis to depart from the level three designation, which resulted from the presumptive override (*see People v Castleberry*, 43 AD3d 1369).

MASTRO, J.P., SKELOS, LIFSON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 13, 2008

PEOPLE OF STATE OF NEW YORK v PATTERSON