

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

D19217
X/prt

_____AD3d_____

Submitted - April 8, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2006-07500

DECISION & ORDER

People of State of New York, respondent,
v Earl Calloway, 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. (Douglas Noll and Andrew Fukuda of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Nassau County (Ayres, J.), dated May 17, 2006, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

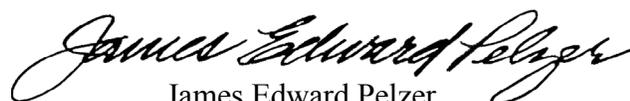
ORDERED that the order is affirmed, without costs or disbursements.

The Supreme Court's determination to assess the defendant 15 points for risk factor 11, as well as 15 points for risk factor 12, was supported by clear and convincing evidence based, inter alia, on facts contained in the pre-sentence report, the case summary prepared by the Board of Examiners of Sex Offenders, and the risk assessment instrument (*see People v Donhauser*, 37 AD3d 1053; *People v Matthie*, 34 AD3d 987, 990).

The defendant's remaining contentions are without merit.

FISHER, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

May 6, 2008

PEOPLE OF STATE OF NEW YORK v CALLOWAY