

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

D20303
W/kmg

_____AD3d_____

Submitted - June 16, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2005-10934

DECISION & ORDER

People of State of New York, respondent,
v Michael A. Arciola, appellant.

David Goodman, Poughkeepsie, N.Y. (Steven Levine of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Dutchess County (Dolan, J.), dated November 4, 2005, 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.

Pursuant to the Sex Offender Registration Act (Correction Law art 6-C), a hearing court has the discretion to depart from the presumptive risk level determined by the risk assessment instrument (*see People v Hines*, 24 AD3d 524, 525; *People v Girup*, 9 AD3d 913; *People v Guaman*, 8 AD3d 545). However, “utilization of the risk assessment instrument will generally ‘result in the proper classification in most cases so that departures will be the exception not the rule’” (*People v Guaman*, 8 AD3d 545, 545, quoting Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [1997 ed]; *see People v Ventura*, 24 AD3d 527; *People v Hines*, 24 AD3d 524, 525; *People v Dexter*, 21 AD3d 403, 404). A departure from the presumptive risk level is warranted where “there exists an aggravating or mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines” (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006 ed]; *see People v White*, 25 AD3d 677; *People v Guaman*, 8 AD3d 545).

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Here, the County Court providently exercised its discretion in departing from the presumptive risk level and designating the defendant a level three sex offender (*see People v Hands*, 37 AD3d 441, 442). In this regard, the County Court properly considered, inter alia, the defendant's prior extensive criminal history and his parole violations (*see People v Kettles*, 39 AD3d 1270, 1271).

The defendant's remaining contention is without merit.

RIVERA, J.P., LIFSON, SANTUCCI and MILLER, JJ., concur.

ENTER:


James Edward Pelger
Clerk of the Court