

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

D20396
G/hu

_____AD3d_____

Submitted - September 2, 2008

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-00389

DECISION & ORDER

People of State of New York, etc., respondent,
v Thomas Austin, appellant.

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Lauren-Brooke Eisen of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated December 6, 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 designate the defendant a level three sex offender based upon a "presumptive override" factor, namely, that the defendant had "a prior felony conviction for a sex crime," is supported by clear and convincing evidence and, thus, should not be disturbed (*see People v Juarbe*, 36 AD3d 602; *People v Clinkscapes*, 18 AD3d 726).

The defendant's claim of ineffective assistance of counsel is without merit (*see People v Lamberty*, 45 AD3d 486; *People v Douglas*, 18 AD3d 967, 968; *cf. People v Stultz*, 2 NY3d 277, 287).

FISHER, J.P., BALKIN, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 23, 2008

PEOPLE OF STATE OF NEW YORK v AUSTIN