

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

D20457  
Y/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 8, 2008

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS, JJ.

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2005-10493

DECISION & ORDER

People of State of New York, respondent,  
v Ted McCracken, appellant.

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Joseph A. Hanshe, Sayville, N.Y. (Matthew Moisan on the brief), for appellant, and appellant pro se.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Anne E. Oh of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Suffolk County (Mullen, J.), dated June 14, 2005, which, after a hearing to redetermine the defendant's sex offender risk level pursuant to the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456), designated him a level three sex offender pursuant to Correction Law article 6-C.

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

Contrary to the defendant's contention, the Supreme Court properly assessed points for the defendant's failure to accept responsibility for his offenses (*see People v Gochnour*, 50 AD3d 754, *lv denied* 10 NY3d 716; *People v Fortin*, 29 AD3d 765). Further, the refusal of the Supreme Court to grant the defendant a downward departure from his presumptive risk assessment was a provident exercise of discretion (*see People v Gochnour*, 50 AD3d 754, *lv denied* 10 NY3d 716).

The defendant's remaining contentions are without merit.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

October 14, 2008

PEOPLE OF STATE OF NEW YORK v McCracken