

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

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Submitted - October 10, 2008

ANITA R. FLORIO, J.P.  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY  
JOHN M. LEVENTHAL, JJ.

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2007-05098

DECISION & ORDER

People of State of New York, respondent,  
v Clyde Perry, appellant.

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Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Avery N. Maron on the brief), for respondent.

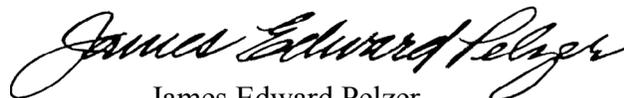
Appeal by the defendant from an order of the Supreme Court, Kings County (Dowling, J.), dated March 27, 2007, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

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

The People established by clear and convincing evidence that the defendant should be designated a level two sex offender under the Sex Offender Registration Act (hereinafter SORA) (*see* Correction Law art 6-C; *People v Hegazy*, 25 AD3d 675). The party seeking a departure from the presumptive risk level has the burden of establishing by clear and convincing evidence that there are mitigating factors “of a kind or to a degree not otherwise taken into account” by the guidelines (SORA: Risk Assessment Guidelines and Commentary, at 4 [2006 ed]; *see People v Taylor*, 47 AD3d 907; *People v Hines*, 24 AD3d 524; *People v Guaman*, 8 AD3d 545). Here, the defendant did not submit any evidence to show the existence of such mitigating factors. Accordingly, the court properly designated the defendant a level two sex offender.

FLORIO, J.P., ANGIOLILLO, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

November 5, 2008

PEOPLE OF STATE OF NEW YORK v PERRY