

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

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_____AD3d_____

Submitted - October 14, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2007-08920

DECISION & ORDER

People of State of New York, respondent,
v Jose Garcia, appellant.

Steven Banks, New York, N.Y. (Joanne Legano Ross of counsel), for respondent.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Sullivan, J.), dated September 24, 2007, 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.

There was clear and convincing evidence presented at the hearing to support the designation of the defendant as a level three sex offender (*see* Correction Law § 168-n[3]; *People v Niola*, 50 AD3d 991; *People v Galligan*, 41 AD3d 683; *People v Wright*, 37 AD3d 797). There is no merit to the defendant's assertion that he was improperly assessed certain points on the Risk Assessment Instrument, or that he was entitled to a downward departure from the presumptive risk level three designation (*see People v Arciola*, 54 AD3d 741; *People v Pardo*, 50 AD3d 992; *People v Foy*, 49 AD3d 835; *People v Lombard*, 30 AD3d 573).

SKELOS, J.P., RITTER, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 12, 2008

PEOPLE OF STATE OF NEW YORK v GARCIA