

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

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_____AD3d_____

Submitted - October 17, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2007-09571

DECISION & ORDER

People of State of New York, respondent,
v Jeffrey Lewis, appellant.

Steven Banks, New York, N.Y. (Denise Fabiano of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart
and Anne Grady of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated September 18, 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.

The hearing court correctly determined that the People met their burden of proving by clear and convincing evidence the facts supporting the defendant's designation as a level three sex offender (*see* Correction Law § 168-n[3]). Contrary to the defendant's contention, the court properly assessed 15 points for the "drug or alcohol abuse" risk factor, as the grand jury testimony and his admissions established that he smoked marijuana at the time of the sex offense (*see People v Conway*, 47 AD3d 492, 493).

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

MASTRO, J.P., RIVERA, COVELLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 5, 2008

PEOPLE OF STATE OF NEW YORK v LEWIS