

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

D21028
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_____AD3d_____

Submitted - October 16, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
MARK C. DILLON
RANDALL T. ENG, JJ.

2006-10572

DECISION & ORDER

People of State of New York, respondent,
v Dale Branigan, appellant.

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Mangano, J.), dated November 8, 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 People met their burden of proving, by clear and convincing evidence, that the defendant should be designated a level three sex offender (*see* Correction Law art 6-C; *People v Goldenberg*, 17 AD3d 433; *People v Dong V. Dao*, 9 AD3d 401). In requesting a downward departure to a designation as a level two sex offender, the defendant failed to demonstrate, by clear and convincing evidence, the existence of a mitigating factor or factors of a kind or to a degree not otherwise taken into account by the guidelines (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006 ed]; *see People v Rivera*, 51 AD3d 646, 647, *lv denied* 11 NY3d 704; *People v Taylor*, 48 AD3d 775).

FISHER, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 12, 2008

PEOPLE OF STATE OF NEW YORK v BRANIGAN