

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

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_____AD3d_____

Submitted - November 18, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-10626

DECISION & ORDER

People of State of New York, etc., respondent, v
Michael Lattimore, appellant.

Stephen J. Pittari, White Plains, N.Y. (Jacqueline F. Oliva of counsel), for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (John J. Carmody, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Westchester County (Bellantoni, J.), entered October 31, 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 pursuant to Correction Law article 6-C (*see People v Hegazy*, 25 AD3d 675). A defendant seeking a downward departure has the burden of establishing by clear and convincing evidence that there are mitigating factors that were not taken into consideration under the guidelines (*see People v Taylor*, 47 AD3d 907). Here, the defendant did not submit any evidence of mitigating factors that were not already taken into consideration under the guidelines. Further, the court appropriately found that the defendant was not over-assessed on the issue of his risk to public safety.

December 16, 2008

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We do not reach the defendant's contention that he should not have been assessed points for continuing course of sexual misconduct in light of the defendant's express statement at the hearing that he did not contest the points assessed for this category (*see People v Kelly*, 46 AD3d 790).

RIVERA, J.P., SPOLZINO, CARNI and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court