

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

D21516
C/kmg

_____AD3d_____

Submitted - November 25, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-07385

DECISION & ORDER

People of State of New York, respondent,
v James Pasquarelli, appellant.

Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Lauren-Brooke Eisen of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated April 23, 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 Supreme Court's designation of the defendant as a level three sex offender was supported by clear and convincing evidence (*see* Correction Law article 6-C; *People v Dong V. Dao*, 9 AD3d 401, 401-402; *People v Smith*, 5 AD3d 752; *People v Moore*, 1 AD3d 421). The Supreme Court providently exercised its discretion in denying the request for a downward departure from the defendant's presumptive risk level since the defendant did not assert a "mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006 ed]; *see People v Foy*, 49 AD3d 835; *People v Walker*, 47 AD3d 692, 694; *People v Williams*, 19 AD3d 388; *People v Guaman*, 8 AD3d 545).

FISHER, J.P., FLORIO, CARNI and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 16, 2008

PEOPLE OF STATE OF NEW YORK v PASQUARELLI