

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

D21520  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 18, 2008

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

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2007-05582

DECISION & ORDER

People of State of New York, respondent,  
v Richard Worley, appellant.

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Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli 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 (Lott, J.), dated June 12, 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 New York Board of Examiners of Sex Offenders (hereinafter the Board) completed a risk assessment instrument to determine the defendant's sex offender status for purposes of the Sex Offender Registration Act (hereinafter SORA). The defendant was assessed a total of 75 points, making him a presumptive level two sex offender. However, the Board recommended an upward departure to a level three designation. After a hearing, the Supreme Court designated the defendant a level three sex offender. We affirm.

Contrary to the defendant's contention on appeal, children depicted in pornographic images are "victims" within the meaning of SORA (*see People v Johnson*, \_\_\_\_\_NY3d\_\_\_\_\_, 2008 NY Slip Op 09247 [2008], *affg* 47 AD3d 140; *People v Villane*, 49 AD3d 517; *People v Lawless*, 44 AD3d 738). Thus, the defendant was properly assessed points for the age of his victims. However, as correctly conceded by the People, the defendant was erroneously assessed points for a history of drug or alcohol abuse (*see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, at 15 [2006 ed]). Nevertheless, the Supreme Court providently exercised its discretion

December 16, 2008

Page 1.

in upwardly departing from the defendant's presumptive sex offender level and designating him a level three sex offender based upon clear and convincing evidence of aggravating factors of a degree not taken into account by the risk assessment instrument and the guidelines (*see People v Villane*, 49 AD3d 517; *People v Fiol*, 49 AD3d 834).

The defendant's remaining contentions are without merit.

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, flowing style.

James Edward Pelzer  
Clerk of the Court