

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

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_____AD3d_____

Submitted - November 24, 2008

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2008-01339

DECISION & ORDER

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

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Hudson, J.), dated January 31, 2008, 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 satisfied their burden of proving, by clear and convincing evidence, the facts necessary to establish that the defendant met the criteria of a level three sex offender (*see* Correction Law § 168-n[3]; *People v Lawless*, 44 AD3d 738; *People v Hardy*, 42 AD3d 487).

It is uncontroverted that the defendant sexually abused his stepdaughter multiple times over a three-year period commencing when she was nine years old, as well as sexually abused two of her friends when they were 12 years old. On at least one occasion, the defendant sexually abused his stepdaughter's friend while the child was asleep. The evidence at the Sex Offender Registration Act Hearing established every risk factor under which he was assessed 125 points, making him presumptively a level three (high risk) offender.

December 23, 2008

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Here, the court considered the defendant's claims of illness and rehabilitation and appropriately declined to find mitigating factors warranting a departure from the presumptive level three sex offender designation (*see People v Gauman*, 8 AD3d 545).

RIVERA, J.P., ANGIOLILLO, ENG and BELEN, 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