

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

D22489  
C/kmg

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

Submitted - February 24, 2009

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO, JJ.

---

2006-10578

DECISION & ORDER

People of State of New York, respondent,  
v Angel Mendez, appellant.

---

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

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Konviser, J.), dated October 31, 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 defendant's contention that the assessment of points based upon his use of forcible compulsion constituted improper "double counting" because he was also assessed points based upon the victim's age is unpreserved for appellate review (*cf. People v Davenport*, 38 AD3d 634, 635), and, in any event, is without merit (*cf. People v Pietarniello*, 53 AD3d 475, 476). Furthermore, contrary to the contention of the defendant, the People established, by clear and convincing evidence, that he accomplished his sex offense through forcible compulsion (*see People v Vasquez*, 49 AD3d 1282, 1283-84; Penal Law § 130.00[8][b]; *cf. People v Davis*, 21 AD3d 590, 591; *People v Ogelsby*, 12 AD3d 857, 859-860; *People v Sehn*, 295 AD2d 749, 749-751). Accordingly, the Supreme Court properly assessed those points, and properly designated the defendant a level three sex offender.

RIVERA, J.P., RITTER, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

March 24, 2009

PEOPLE OF STATE OF NEW YORK v MENDEZ