

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

D22782
Y/prt

_____AD3d_____

Submitted - February 23, 2009

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
HOWARD MILLER
RANDALL T. ENG, JJ.

2008-04823

DECISION & ORDER

People of State of New York, respondent,
v Christopher Pratt, appellant.

Stephen J. Pittari, White Plains, N.Y. (Salvatore A. Gaetani of counsel), for appellant.

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

Appeal by the defendant from an order of the County Court, Westchester County (Cohen, J.), entered April 18, 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.

Contrary to the defendant's contention, he was properly allocated points both for his expulsion from a treatment program (risk factor 12) and his release without supervision (risk factor 14), as there was clear and convincing evidence which merited the imposition of points in both categories (*see People v Orengo*, 40 AD3d 609, 610; *see also People v Rouff*, 49 AD3d 517, 517; *People v Lewis*, 37 AD3d 689, 690).

The defendant failed to present clear and convincing evidence of special circumstances that would warrant a downward departure from the presumptive level three designation established by the proof at the hearing (*see People v Herron*, 59 AD3d 414; *People v Pasquarelli*, 57 AD3d 753). The County Court appropriately designated the defendant a level three sex offender and providently exercised its discretion in denying his request for a downward departure.

April 21, 2009

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SPOLZINO, J.P., FLORIO, MILLER and ENG, 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