

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

D22825
Y/kmg

_____AD3d_____

Submitted - January 9, 2009

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
JOSEPH COVELLO
ARIEL E. BELEN, JJ.

2008-02620

DECISION & ORDER

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

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael Blakey of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated February 6, 2008, which, after a hearing, designated him a level two sex offender pursuant to Corrections Law § 168-n(3).

ORDERED that the order is affirmed, without costs or disbursements.

The defendant was convicted, upon his plea of guilty, of three counts of sexual abuse in the first degree (Penal Law § 260.10[1]) and one count of endangering the welfare of a minor (Penal Law § 260.10[1]). At age 21, the defendant sexually abused the nine-year-old daughter of a coworker who gave him room and board in her home when he had no where else to live.

At his hearing, the County Court reviewed the defendant's case summary, presentence investigation report, and risk assessment instrument, and, finding that the defendant had been assessed 80 points, designated the defendant a level two offender. The defendant objected to the 15 points that he was assessed for drug or alcohol abuse, asserting, inter alia, that alcohol use was not a factor in the crimes of which he was convicted. 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 two sex offender. "An offender need not be abusing drugs or alcohol at the time of the instant offense to

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receive points under the risk factor for drug or alcohol abuse” (Sex Offender Registration Act Risk Assessment Guidelines and Commentary at 15 [2006]; Correction Law § 168-n[3]; *People v Regan*, 46 AD3d 1434; *People v Lewis*, 50 AD3d 1567).

MASTRO, J.P., FLORIO, COVELLO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court