

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

D22951
C/hu

_____AD3d_____

Submitted - March 23, 2009

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-07325

DECISION & ORDER

People of State of New York, etc., respondent,
v Wayne Horne, appellant.

Stephen J. Pittari, White Plains, N.Y. (David B. Weisfuse of counsel), for appellant.

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

Appeal by the defendant from an order of the County Court, Westchester County (Loehr, J.), dated July 10, 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 defendant was designated a level three sex offender pursuant to the Sex Offender Registration Act (Correction Law article 6-C) based on an override for a prior conviction for a felony sex crime—promoting a sexual performance by a child. The defendant’s contention that the override was improperly applied because that offense is not a “sex crime” is without merit. In relevant part, Correction Law § 168-a(2) defines a “sex crime” to include any offense under article 263 of the Penal Law. Promoting a sexual performance by a child is an offense under Penal Law § 263.15 (*see People v Johnson*, 11 NY3d 416). Thus, the defendant was properly designated a level three sex offender.

RIVERA, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 28, 2009

PEOPLE OF STATE OF NEW YORK v HORNE