

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

D23337
G/hu

_____AD3d_____

Submitted - April 17, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2008-00323

DECISION & ORDER

People of State of New York, etc., respondent,
v Charles Maxwell, appellant.

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

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Chambers J.), dated January 4, 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's contention that the assessment of points for risk factor 1 based upon his use of forcible compulsion constituted improper "double counting" because he also was assessed points for risk factor 5 based upon the victim's age is without merit (*see People v Mendez*, 60 AD3d 923; *see also People v Pietarniello*, 53 AD3d 475, 476). Furthermore, the People established, by clear and convincing evidence, that the defendant engaged in forcible compulsion in the commission of his sex offense (*see Penal Law § 130.00[8][b]*; *People v Scanlon*, 52 AD3d 1035; *People v Vasquez*, 49 AD3d 1282).

Accordingly, the Supreme Court properly assessed those points, and properly designated the defendant a level three sex offender.

SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court