

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

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Submitted - September 10, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2008-00331

DECISION & ORDER

People of State of New York, respondent,
v Marvin Chambers, appellant.

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

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

Appeal by the defendant, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Brennan, J.), dated January 9, 2008, as, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The People met their burden of establishing, by clear and convincing evidence, risk factors bearing sufficient total points to support a level two sex offender adjudication pursuant to Correction Law article 6-C. The defendant was properly assessed points for drug or alcohol abuse, as he admitted abusing drugs at the time he committed the offense (*see People v Carpenter*, 60 AD3d 833; *People v Morales*, 33 AD3d 982, 983; Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 8 [2006 ed]). Moreover, the defendant allocuted that he was in possession of a BB-gun at the time of the commission of the crime and threatened to put a “cap” in the victim at the time of the incident if she did not comply with his command. Accordingly, the People presented clear and convincing evidence that the defendant was armed with a dangerous

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instrument at the time of the offense (*see People v Walker*, 15 AD3d 692; *cf. People v Swain*, 46 AD3d 1157, 1158), and should be designated a presumptive risk level two.

SKELOS, J.P., COVELLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court