

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

D24592
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_____AD3d_____

Submitted - September 22, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2005-05210

DECISION & ORDER

People of State of New York, respondent,
v Nahshon T. Thomas, appellant.

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and David A. Bernstein of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Margaret E. Mainusch and Joanna Hershey of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Gulotta, J.), dated May 3, 2005, 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, the County Court providently exercised its discretion in upwardly departing from the defendant's presumptive sex offender level (*see People v Villane*, 49 AD3d 517, 517-518; *People v Fabara*, 49 AD3d 619). The court's determination was supported by clear and convincing evidence based, inter alia, on the case summary prepared by the Board of Examiners of Sex Offenders, the defendant's mental health evaluation, and the probation department report (*see People v Fabara*, 49 AD3d 619).

The defendant's remaining contentions are without merit.

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 13, 2009

PEOPLE OF STATE OF NEW YORK v THOMAS