

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

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_____AD3d_____

Submitted - September 17, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
SHERI S. ROMAN, JJ.

2008-04007

DECISION & ORDER

People of State of New York, respondent,
v Thomas Kraus, appellant.

Steven Banks, New York, N.Y. (Nancy E. Little of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Hall, J.), dated April 9, 2008, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

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

The Supreme Court did not improvidently exercise its discretion in declining to downwardly depart from the defendant's presumptive risk level inasmuch as there was no clear and convincing evidence in the record of a mitigating factor "of a kind or to a degree, not otherwise adequately taken into account by the guidelines" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006 ed]; *see People v Burgos*, 39 AD3d 520; *cf. People v Agard*, 35 AD3d 568).

FISHER, J.P., COVELLO, ANGIOLILLO and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 20, 2009

PEOPLE OF STATE OF NEW YORK v KRAUS