

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

D25059  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 30, 2009

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

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2008-11376

DECISION & ORDER

People of State of New York, respondent, v  
Arthur E. Pearsall, appellant.

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Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera of counsel),  
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Spinner, J.), dated November 18, 2008, which, after a hearing to redetermine the defendant's sex offender risk level pursuant to the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456) and pursuant to *Doe v Pataki* (481 F3d 69), 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 defendant failed to show, by clear and convincing evidence, that special circumstances existed warranting a downward departure from his presumptive risk level two sex offender designation (*see People v Herron*, 59 AD3d 414; *People v Ainoris*, 57 AD3d 864; *People v Pasquarelli*, 57 AD3d 753; *People v Guaman*, 8 AD3d 545; *cf. People v Abdullah*, 31 AD3d 515, 516).

Accordingly, the County Court, after considering the mitigating factors advanced by

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the defendant, appropriately determined the defendant to be a level two sex offender and providently exercised its discretion in denying his request for a downward departure.

SKELOS, J.P., ENG, AUSTIN and ROMAN, 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