

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

D25075
O/kmg

_____AD3d_____

Submitted - October 23, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-04889

DECISION & ORDER

People of State of New York, respondent, v
Jerome Sam, appellant.

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Ronnie Jane Lamm of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated May 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 defendant failed to demonstrate by clear and convincing evidence that there existed a mitigating factor of a kind or to a degree not otherwise taken into account by the guidelines (*see People v Jacobs*, 61 AD3d 835; *People v Serrano*, 61 AD3d 946, 947; *People v Abdullah*, 31 AD3d 515, 516). The factors relied upon by the defendant, alcohol abuse and his relationship with the victim, are expressly addressed in the SORA guidelines (*see People v Perez*, 61 AD3d 946; *People v Townsend*, 60 AD3d 655). The County Court appropriately designated the defendant a level two sex offender and providently exercised its discretion in denying his request for a downward departure.

FISHER, J.P., ANGIOLILLO, ENG and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 17, 2009

PEOPLE OF STATE OF NEW YORK v SAM