

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

D25138
G/cb

_____AD3d_____

Submitted - November 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-11261

DECISION & ORDER

People of State of New York, respondent, v
Harold Ellis, appellant.

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Michael Shollar of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated November 8, 2007, 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 People established, by clear and convincing evidence (*see* Correction Law § 168-n[3]), that he inflicted a "physical injury" upon the victim (Penal Law § 10.00[9]; *see People v Sullivan*, 64 AD3d 67, 74; *People v Fisher*, 22 AD3d 358; *People v Tomczak*, 189 AD2d 926, 927; *cf. People v Chiddick*, 8 NY3d 445, 447-448). Accordingly, the Supreme Court properly assessed 15 points for risk factor 1 based upon the defendant's use of violence, and properly designated the defendant a level three sex offender.

FISHER, J.P., COVELLO, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 24, 2009

PEOPLE OF STATE OF NEW YORK v ELLIS