

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

D25381  
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Submitted - November 19, 2009

A. GAIL PRUDENTI, P.J.  
JOSEPH COVELLO  
PLUMMER E. LOTT  
SANDRA L. SGROI, JJ.

2008-09289

DECISION & ORDER

People of State of New York, respondent, v John  
Reitano, appellant.

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Anthea H.  
Bruffee of counsel; George P. Sieniawski on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Holdman, J.), dated October 7, 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 only proper procedural vehicle for challenging a determination that an out-of-state conviction subjects an offender to the registration requirements of the Sex Offender Registration Act (*see* Correction Law art 6-C) is a CPLR article 78 proceeding against the Board of Examiners of Sex Offenders (*see People v Teagle*, 64 AD3d 549, 550; *People v Rendace*, 58 AD3d 821; *People v Geier*, 56 AD3d 539, 540; *People v Carabello*, 309 AD2d 1227, 1228; *Matter of Mandel*, 293 AD2d 750, 751). Thus, on this appeal from the Supreme Court's order designating the appellant a level two sex offender, the appellant's contention that he should not have been required to register as a sex offender in New York based on his conviction of sexual battery in California is not properly before this Court (*see People v Teagle*, 64 AD3d at 550; *People v Carabello*, 309 AD2d at 1228).

Contrary to the appellant's contention, his attorney's failure to commence a CPLR

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article 78 proceeding on his behalf did not deprive him of the effective assistance of counsel, since such a proceeding would have had “little or no chance of success” (*People v Caban*, 5 NY3d 143, 152; *see* Correction Law § 168-a[2][b], [2][d][i]; Penal Law § 130.55; Cal. Penal Code § 243.4[e][1]; *Matter of North v Board of Examiners of Sex Offenders of State of N.Y.*, 8 NY3d 745).

Inasmuch as the appellant does not raise any issue with respect to the Supreme Court’s risk level designation made in the order appealed from, the order must be affirmed.

PRUDENTI, P.J., COVELLO, LOTT and SGROI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court