

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

D27487
C/kmg

_____AD3d_____

Submitted - April 20, 2010

MARK C. DILLON, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2009-05213

DECISION & ORDER

People of the State of New York, respondent,
v David Neal, 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 5, 2009, 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.

The County Court properly found, based on the evidence before it, including, inter alia, the case summary, the presentence report, and the statements of the victim, the defendant, and a witness to the subject crimes, as well as photographic and medical documentation depicting and describing the victim's injuries, that the People demonstrated by clear and convincing evidence that an upward departure from level two to level three was warranted in this case (*see People v Rios*, 57 AD3d 501, 502; *People v Miller*, 48 AD3d 774, 774-775; *People v Leibach*, 39 AD3d 1093, 1093-1094; *People v Joslyn*, 27 AD3d 1033, 1033-1035).

DILLON, J.P., MILLER, DICKERSON and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

May 25, 2010

PEOPLE OF STATE OF NEW YORK v NEAL

May 25, 2010

PEOPLE OF STATE OF NEW YORK v NEAL