

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

D27657
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_____AD3d_____

Submitted - April 22, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT, JJ.

2008-10064

DECISION & ORDER

People of State of New York, respondent,
v James Porter, appellant.

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Brennan of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Hudson, J.), dated October 9, 2008, 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 proof offered at the hearing, showing that he was twice convicted of failing to register as a sex offender, provided clear and convincing evidence that he was at an increased risk to re-offend (*see* Correction Law § 168-o). Accordingly, the County Court properly granted the motion of the People of the State of New York for an upward departure of his risk level designation from a level two to a level three sex offender (*see People v Turpeau*, 68 AD3d 1083, *lv denied* 14 NY3d 705; *People v Walker*, 67 AD3d 760, 761).

The defendant's remaining contentions are without merit.

RIVERA, J.P., FLORIO, ANGIOLILLO and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 1, 2010

PEOPLE OF STATE OF NEW YORK v PORTER