

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

D27690
W/mv

_____AD3d_____

Submitted - April 29, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-10780

DECISION & ORDER

People of State of New York, respondent,
v Larry Richardson, appellant.

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Jeanette Lifschitz, and Rona I. Kugler of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Latella, J.), dated October 31, 2008, which, after a hearing to redetermine his sex offender risk level pursuant to the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456), 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 show by clear and convincing evidence that there existed mitigating circumstances of a kind or to a degree not otherwise taken into account by the risk assessment instrument that would have warranted a downward departure from his presumptive risk level designation (*see People v McKee*, 66 AD3d 854, 855; *People v Pietarniello*, 53 AD3d 475, 478; *People v McLaughlin*, 40 AD3d 832, 833). Accordingly, the Supreme Court providently exercised its discretion in designating him a level two sex offender (*see People v Pietarniello*, 53 AD3d at 478; *People v Gochnour*, 50 AD3d 754, 755).

PRUDENTI, P.J., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

June 1, 2010

PEOPLE OF STATE OF NEW YORK v RICHARDSON