

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

D27770
Y/kmg

_____AD3d_____

Submitted - May 13, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-09435

DECISION & ORDER

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

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

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

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated September 12, 2008, which, after a hearing to redetermine the defendant's 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 special circumstances existed warranting a downward departure from his presumptive risk level two sex offender designation (*see People v Pearsall*, 67 AD3d 876; *People v Atkinson*, 65 AD3d 1112; *People v Herron*, 59 AD3d 414, 415; *People v Ainoris*, 57 AD3d 864, 865; *People v Pasquarelli*, 57 AD3d 753; *People v Guaman*, 8 AD3d 545; *cf. People v Stevens*, 55 AD3d 892, 894).

Accordingly, the Supreme Court, after considering the mitigating factors advanced by the defendant, appropriately determined the defendant to be a level two sex offender and

June 8, 2010

Page 1.

PEOPLE OF STATE OF NEW YORK v LYNK

providently exercised its discretion in denying his request for a downward departure (*see People v Goodwin*, 49 AD3d 619, 621).

FISHER, J.P., COVELLO, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court