

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

D28740
H/hu

_____AD3d_____

Submitted - October 7, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2008-08935

DECISION & ORDER

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

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated August 29, 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 special circumstances existed warranting a downward departure from his presumptive risk level two designation (*see People v Lynk*, 74 AD3d 929, *lv denied* 15 NY3d 708; *People v Colavito*, 73 AD3d 1004, *lv denied* 15 NY3d 705; *People v Pearsall*, 67 AD3d 876; *People v Williams*, 49 AD3d 518; *People v Adams*, 44 AD3d 1020; *People v Morales*, 33 AD3d 982, 983). Accordingly, the Supreme Court, after considering the mitigating factors advanced by the defendant, appropriately determined him to be a level two sex offender, and providently exercised its discretion in denying his request for

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a downward departure (*see People v Lynk*, 74 AD3d 929; *People v Colavito*, 73 AD3d 1004; *People v Ainoris*, 57 AD3d 864, 865).

FISHER, J.P., SANTUCCI, ENG and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court