

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

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_____AD3d_____

Submitted - October 5, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2009-06033

DECISION & ORDER

People of State of New York, respondent,
v Richard Davis, appellant.

Steven Banks, New York, N.Y. (Joanne Legano Ross of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anthea H. Bruffee, and Catherine Dagonese of counsel), for respondent.

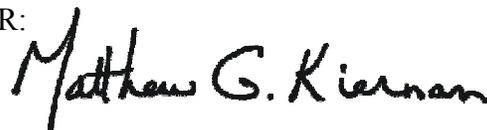
Appeal by the defendant from an order of the Supreme Court, Kings County (D'Emic, J.), dated June 12, 2009, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements.

The Supreme Court providently exercised its discretion in denying the defendant's request for a downward departure from his presumptive level three sex offender designation (*see People v King*, 74 AD3d 1162; *People v Pietarniello*, 53 AD3d 475, 478; *People v Taylor*, 47 AD3d 907). The defendant failed to demonstrate, by clear and convincing evidence, that there exists a mitigating factor of a kind or to a degree not otherwise taken into account by the Sex Offender Registration Act Guidelines that warranted such a departure (*see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary* at 4 [2006 ed.]; *People v Pietarniello*, 53 AD3d 475; *People v Taylor*, 47 AD3d 907).

DILLON, J.P., FLORIO, BALKIN and ROMAN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

October 26, 2010

PEOPLE OF STATE OF NEW YORK v DAVIS