

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

D28747

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_____AD3d_____

Submitted - October 4, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-11322

DECISION & ORDER

People of State of New York, respondent,
v William Johnson, Jr., 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 (Kahn, J.), dated October 21, 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.

Contrary to the defendant's contention, the County Court's designation of the defendant as a level three sex offender under the Sex Offender Registration Act (hereinafter SORA) was supported by clear and convincing evidence (*see* Correction Law § 168-n[3]). The County Court properly assessed 25 points under risk factor two and 20 points under risk factor four (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 9-10 [2006 ed]). The victim's sworn statements, offered by the People at the SORA hearing, constituted "reliable hearsay" (Correction Law § 168-n[3]; *People v Mingo*, 12 NY3d 563, 573), and provided a sufficient basis for the assessment of those points.

October 26, 2010

Page 1.

PEOPLE OF STATE OF NEW YORK v JOHNSON

Moreover, the defendant did not demonstrate that special circumstances existed which would warrant a departure from the risk level three designation (*see People v Maiello*, 32 AD3d 463; *People v Guaman*, 8 AD3d 545).

RIVERA, J.P., ANGIOLILLO, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court