

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

D29177

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_____AD3d_____

Submitted - November 9, 2010

A. GAIL PRUDENTI, P.J.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-04531

DECISION & ORDER

People of State of New York, respondent,
v Raymond Rodriguez, appellant.

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Gamaliel Marrero on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Tomei, J.), dated April 28, 2008, 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 failed to set forth the findings of fact and conclusions of law upon which its risk assessment determination was made, as required by Correction Law § 168-n(3). However, this Court may make its own findings of fact and conclusions of law where, as here, the record is sufficient to do so (*see People v Guitard*, 57 AD3d 751; *People v Forney*, 28 AD3d 446).

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in denying his request for a downward departure from his presumptive level three sex offender status as shown on the risk assessment instrument. The defendant failed to present clear and convincing evidence of a special circumstance warranting such a departure (*see People v McKee*, 66

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AD3d 854; *People v Cooke*, 57 AD3d 750; *People v Taylor*, 47 AD3d 907; *People v Richardson*, 47 AD3d 905; *People v Adams*, 44 AD3d 1020).

PRUDENTI, P.J., FLORIO, BELEN and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court