

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

D29337  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 15, 2010

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

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2007-09200

DECISION & ORDER

People of State of New York, respondent,  
v Mark Copeland, appellant.

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Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and Dori Cohen of counsel),  
for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Andrew Fukuda of counsel;  
Adam Citron on the brief), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County  
(Calabrese, J.), dated September 6, 2007, which, after a hearing, designated him as a level two 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 him as a  
level two sex offender under the Sex Offender Registration Act (Correction Law art 6-C; 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 statement and the presentence report, offered by the People at the SORA  
hearing, constituted "reliable hearsay" (Correction Law § 168-n[3]; *see People v Mingo*, 12 NY3d  
563, 573-574), and provided a sufficient basis for the assessment of those points (*see People v*  
*Pettigrew*, 14 NY3d 406, 408-409; *People v Johnson*, 77 AD3d 897).

Moreover, the County Court providently exercised its discretion in denying the  
defendant's request for a downward departure, as the defendant failed to present clear and convincing

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evidence of a mitigating factor “of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines” (SORA: Risk Assessment Guidelines and Commentary at 4 [2006 ed.]; *see People v Cruz*, 74 AD3d 1305, 1306; *People v Colavito*, 73 AD3d 1004, 1005; *People v Bowens*, 55 AD3d 809, 810).

The defendant’s remaining contentions are unpreserved for appellate review (*see People v Charache*, 9 NY3d 829, 830; *People v McElhearn*, 56 AD3d 978, 979).

RIVERA, J.P., DICKERSON, LOTT and ROMAN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court