

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

D29396
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_____AD3d_____

Submitted - November 29, 2010

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-06400

DECISION & ORDER

People of State of New York, respondent,
v Lino Mendez, appellant.

Steven Bas, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (J. Goldberg, J.), dated July 2, 2009, which, after a hearing, 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 Supreme Court's designation of the defendant as a level two sex offender under the Sex Offender Registration Act (hereinafter SORA) was supported by clear and convincing evidence (*see* Correction Law article 6-C; *People v Pardo*, 50 AD3d 992; *People v Lawless*, 44 AD3d 738; *People v Hegazy*, 25 AD3d 675). Based upon the defendant's prior conviction of driving while intoxicated, his score on the Michigan Alcoholic Screening test, and facts contained in the case record and presentence report (*see* Correction Law § 168-n; *People v Mingo*, 12 NY3d 563, 573; *People v Murphy*, 68 AD3d 832; *People v Smolen*, 47 AD3d 623; *People v Yarborough*, 43 AD3d 1129), the Supreme Court properly assessed 15 points under risk factor 11 for a history of alcohol abuse (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 15 [2006 ed.]; *People v Guitard*, 57 AD3d 751).

December 14, 2010

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The defendant failed to present any mitigating factors which would warrant a downward departure and, thus, we find no basis to disturb the Supreme Court's designation of the defendant as a level two sex offender (*see People v Blackman*, _____AD3d_____, 2010 NY Slip Op 08082 [2d Dept 2010]; *People v Baez*, _____AD3d_____, 2010 NY Slip Op 07070 [2d Dept 2010]).

MASTRO, J.P., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court