

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

D29532  
W/ct

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

Submitted - November 16, 2010

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2010-00181

DECISION & ORDER

People of State of New York, respondent,  
v Kenneth Charlton, appellant.

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Lynn W.L. Fahey, New York, N.Y. (Warren S. Landau of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart  
of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated November 20, 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 defendant failed to show by clear and convincing evidence that special circumstances existed warranting a downward departure from his presumptive designation as a risk level two sex offender (*see People v Bennis*, 77 AD3d 896; *People v Lynk*, 74 AD3d 929; *People v Colavito*, 73 AD3d 1004, 1005; *People v Guaman*, 8 AD3d 545). Accordingly, the Supreme Court, after considering the mitigating factors advanced by the defendant, appropriately determined him to be a level two sex offender, and providently exercised its discretion in denying his request for a downward departure (*see People v Bennis*, 77 AD3d 896; *People v Foy*, 49 AD3d 835; *People v Walker*, 47 AD3d 692, 694).

FISHER, J.P., ANGIOLILLO, BELEN and AUSTIN, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court

December 17, 2010

PEOPLE OF STATE OF NEW YORK v CHARLTON