

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

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_____AD3d_____

Submitted - December 14, 2010

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2009-03276

DECISION & ORDER

People of State of New York, respondent,
v Edward Burgess, appellant.

Steven Banks, New York, N.Y. (Joanne Legano Ross of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Tomei, J.), dated March 25, 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.

The defendant failed to show by clear and convincing evidence that special circumstances existed warranting a downward departure from his presumptive risk level three designation (*see People v Bennis*, 77 AD3d 896; *People v Lynk*, 74 AD3d 929, 929-930; *People v Colavito*, 73 AD3d 1004, 1005; *People v Pearsall*, 67 AD3d 876; *People v Bowens*, 55 AD3d 809, 810; *People v Williams*, 49 AD3d 518). Accordingly, the Supreme Court appropriately determined him to be a level three sex offender, and, after considering the mitigating factors advanced by the defendant, providently exercised its discretion in denying his request for a downward departure (*see People v Lynk*, 74 AD3d at 929-930; *People v Colavito*, 73 AD2d at 1004; *People v Ainoris*, 57 AD3d 864, 865).

MASTRO, J.P., RIVERA, AUSTIN and ROMAN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

January 11, 2011

PEOPLE OF STATE OF NEW YORK v BURGESS