

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

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_____AD3d_____

Submitted - December 16, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
SANDRA L. SGROI, JJ.

2009-04496

DECISION & ORDER

People of State of New York, respondent, v
Robert Fareira, appellant.

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

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Sullivan, J.), dated April 29, 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 People established, by clear and convincing evidence, that the defendant had been previously convicted of two felony sex crimes. Therefore, he was presumptively a level three sex offender pursuant to the Sex Offender Registration Act (hereinafter SORA) by application of “automatic override number one” in his Risk Assessment Instrument, which override addresses a prior felony conviction for a sex crime (*see* Correction Law article 6-C; *see generally* *People v King*, 74 AD3d 1162). The party seeking a downward departure from the presumptive risk level has the burden of establishing by clear and convincing evidence that there are mitigating factors “of a kind, or to a degree, that [are] otherwise not adequately taken into account” by the guidelines (SORA: Risk Assessment Guidelines and Commentary, at 4 [2006 ed.]; *see* *People v King*, 74 AD3d 1162; *People v Pietarniello*, 53 AD3d 475, 478; *People v Sam*, 67 AD3d 876, 876-877). Here, the defendant did not submit any evidence to show the existence of such mitigating factors. Accordingly, the Supreme Court properly designated the defendant a level three sex offender.

January 11, 2011

Page 1.

The defendant's remaining contentions are unpreserved for appellate review.

PRUDENTI, P.J., ANGIOLILLO, FLORIO and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court