

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

D29656  
G/hu

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

Submitted - December 16, 2010

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

---

2008-11052

DECISION & ORDER

People of State of New York, respondent,  
v John Martonak, appellant.

---

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Anthea H. Bruffee of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Tomei, J.), dated December 5, 2008, which, after a hearing, designated him a level two predicate sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements.

The defendant failed to preserve for appellate review his contention that the Supreme Court should not have assessed him 20 points under risk factor 5 because the People did not prove, by clear and convincing evidence, that the individuals depicted in the child pornography he possessed were between the ages of 11 and 16 (*see People v Teagle*, 64 AD3d 549, 550).

Under the circumstances of this case, the Supreme Court acted appropriately in conducting a hearing pursuant to the Sex Offender Registration Act (*see* Correction Law art 6-C) approximately 16 months before the defendant's anticipated release from federal prison (*see* Correction Law §§ 168-l[6], [8], 168-n[2]).

January 11, 2011

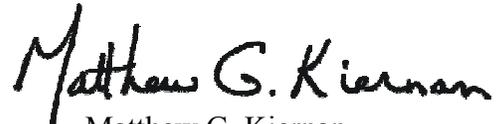
PEOPLE OF STATE OF NEW YORK v MARTONAK

Page 1.

The defendant's remaining contention is without merit.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court