

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

D30213
C/prt

_____AD3d_____

Submitted - January 25, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2009-02455

DECISION & ORDER

People of State of New York, respondent,
v Daniel Spring, appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Thomas C. Costello of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated February 3, 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's contention that he was entitled to a downward departure to a level two sex offender status is unpreserved for appellate review (*see People v Iorio*, 74 AD3d 1306; *People v Rivera*, 51 AD3d 646, 647; *People v Lewis*, 50 AD3d 1567, 1568). In any event, the defendant failed to demonstrate that there existed mitigating circumstances of a kind or to a degree not otherwise adequately taken into account by the guidelines that warranted a downward departure from his presumptive level three sex offender status (*see People v Mendez*, 79 AD3d 834, *lv denied* 16 NY3d 707; *People v Maiello*, 32 AD3d 463).

DILLON, J.P., COVELLO, FLORIO and HALL, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

April 26, 2011

PEOPLE OF STATE OF NEW YORK v SPRING