

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

D30861
C/kmb

_____AD3d_____

Submitted - March 24, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-05114

DECISION & ORDER

People of State of New York, respondent,
v Quentin L. Bussie, appellant.

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

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

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated April 19, 2010, 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.

A court has the discretion to depart from the presumptive risk level, as determined by use of the risk assessment instrument, based upon the facts in the record (*see People v Bowens*, 55 AD3d 809, 810; *People v Taylor*, 47 AD3d 907, 907; *People v Burgos*, 39 AD3d 520, 520; *People v Hines*, 24 AD3d 524, 525). However, “utilization of the risk assessment instrument will generally ‘result in the proper classification in most cases so that departures will be the exception not the rule’” (*People v Guaman*, 8 AD3d 545, 545, quoting Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [1997 ed]; *see People v Bowens*, 55 AD3d at 810; *People v Taylor*, 47 AD3d at 908; *People v Burgos*, 39 AD3d at 520; *People v Hines*, 24 AD3d at 525). A departure from the presumptive risk level is warranted where “there exists an aggravating or mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines” (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006 ed]; *see People v Bowens*, 55 AD3d at 810; *People v Taylor*, 47 AD3d at 908; *People v Burgos*, 39 AD3d at 520; *People v Hines*, 24 AD3d at 525).

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Here, the County Court providently exercised its discretion in denying the defendant's request for a downward departure, as the defendant failed to demonstrate the existence of mitigating circumstances of a kind, or to a degree, not otherwise adequately taken into account by the guidelines (see *People v Mendez*, 79 AD3d 834, _____ NY3d _____, 2011 NY Slip Op 68259 [2011]; *People v Maiello*, 32 AD3d 463).

RIVERA, J.P., DICKERSON, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court