

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

D31377  
W/kmb

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Submitted - April 12, 2011

DANIEL D. ANGIOLILLO, J.P.  
ANITA R. FLORIO  
PLUMMER E. LOTT  
LEONARD B. AUSTIN, JJ.

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2008-10123

DECISION & ORDER

People of State of New York, respondent, v  
Stephen Gallo, also known as Steven Gallo,  
appellant.

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Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated October 3, 2008, which, after a hearing to redetermine his sex offender risk level pursuant to the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456) and pursuant to *Doe v Pataki* (481 F3d 69), designated him a level two sex offender pursuant to Correction Law article 6-C.

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

The Supreme Court, after considering the alleged mitigating factors advanced by the defendant, providently exercised its discretion in denying his request for a downward departure from his presumptive designation as a risk level two sex offender.

ANGIOLILLO, J.P., FLORIO, LOTT and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court

May 24, 2011

PEOPLE OF STATE OF NEW YORK v GALLO