

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

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_____AD3d_____

Submitted - May 12, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2009-05356

DECISION & ORDER

People of State of New York, respondent,
v Gary Ruiz, appellant.

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg, Tammy Feman, and Argun M. Ulgen of counsel; Brian Shupak, Robert Smithson, and Julia Surette on the brief), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Andrew Fukuda and Jason R. Richards of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Nassau County (Berkowitz, J.), dated May 27, 2009, which, after a hearing, designated him a level three sexually violent sex offender pursuant to Correction Law article 6-C.

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

The People met their burden of proving, by clear and convincing evidence, the facts supporting the defendant's adjudication as a level three sexually violent sex offender (*see* Correction Law § 168-a[3], [7][b]; § 168-n[3]; *People v Mingo*, 12 NY3d 563, 571). To the extent that the County Court failed to set forth the findings of fact and conclusions of law upon which its determination was based as required by Correction Law § 168-n(3), remittal is not required because the record in this case is sufficient for this Court to make its own findings of fact and conclusions of law (*see People v King*, 74 AD3d 1162, 1162-1163; *People v Guitard*, 57 AD3d 751; *People v Banks*, 48 AD3d 656).

Contrary to the defendant's contention, the County Court properly assessed 10 points under risk factor 1 for using forcible compulsion against the victim (*see Sex Offender Registration*

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Act: Risk Assessment Guidelines and Commentary, at 8 [2006 ed]) and a total of 40 points under risk factors 8 and 9 (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 13-14 [2006 ed]). Moreover, the assessment of 15 points under risk factor 12 was appropriate (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 15-16 [2006 ed]).

The defendant's remaining contentions are without merit.

RIVERA, J.P., BALKIN, LOTT and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court