

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

D31637
H/ct

_____AD3d_____

Submitted - May 19, 2011

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
JEFFREY A. COHEN, JJ.

2009-03839

DECISION & ORDER

People of State of New York, respondent,
v Clayton Brown, appellant.

Steven Banks, New York, N.Y. (Denise Fabiano of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Morgan J. Dennehey, and Matthew Livits of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Chun, J.), dated April 20, 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 Board of Examiners of Sex Offenders recommended that the defendant be classified as a level three sex offender. “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’” (*People v Bussie*, 83 AD3d 920, 920, quoting Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006 ed]). The Supreme Court properly determined that the defendant was not entitled to a downward departure and, thus, properly designated the defendant a level three sex offender (*see People v Bussie*, 83 AD3d 920; *People v Mendez*, 79 AD3d 834).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court

June 7, 2011

PEOPLE OF STATE OF NEW YORK v BROWN