

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

D31683
G/ct

_____AD3d_____

Submitted - May 24, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2009-06195

DECISION & ORDER

People of State of New York, respondent,
v Kenard Smith, appellant.

Steven Banks, New York, N.Y. (Joanne Legano Ross of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel; Gamaliel Marrero on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Marrus, J.), dated June 26, 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.

There was clear and convincing evidence to support the Supreme Court's determination to designate the defendant a level three sex offender (*see People v Fisher*, 36 AD3d 880; *People v Inghilleri*, 21 AD3d 404; *People v Guaman*, 8 AD3d 545). There is no merit to the defendant's contention that he was entitled to a downward departure from this risk level (*see People v Fareira*, 80 AD3d 589; *People v Burgess*, 80 AD3d 589; *People v Gonzalez*, 48 AD3d 284; *People v Warren*, 42 AD3d 593; *People v Fortin*, 29 AD3d 765; *see also People v Iorio*, 74 AD3d 1306; *People v Miller*, 48 AD3d 774).

DILLON, J.P., BALKIN, BELEN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

June 14, 2011

PEOPLE OF STATE OF NEW YORK v SMITH