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

D31774
W/nl

_____AD3d_____ Submitted - May 31, 2011

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2009-06381 DECISION & ORDER

People of State of New York, respondent,
v Kevin T. Johnson, appellant.

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Murphy, J.), dated July 6, 2009, 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.

Contrary to the defendant's contention, in determining his risk level under the Sex Offender Registration Act (Correction Law article 6-C; hereinafter SORA), the Supreme Court properly assessed 10 points against him under risk factor 12 for failure to accept responsibility for his criminal conduct. Although the defendant formally admitted his guilt at a plea proceeding, and participated in a sex offender treatment program, the People established that the defendant wrote a letter to the Board of Examiners of Sex Offenders prior to the SORA hearing, in which he denied his guilt of the present offense. Accordingly, the People proved by clear and convincing evidence the defendant's failure to genuinely accept responsibility for his conduct, "as required by the risk assessment guidelines" (*People v Vega*, 79 AD3d 718, 719 [internal quotation marks omitted]; *see People v Mitchell*, 300 AD2d 377, 378; *see also People v Teagle*, 64 AD3d 549, 550).

The defendant's contention that he was entitled to a downward departure from his presumptive level two risk assessment is without merit (*see People v Sivells*, 83 AD3d 1027; *People v Bussie*, 83 AD3d 920).

The defendant's remaining contention is without merit.

SKELOS, J.P., COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court