

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

D31998
O/ct

_____AD3d_____

Submitted - June 14, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-03539

DECISION & ORDER

People of State of New York, respondent,
v Jermaine Alston, appellant.

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel; Christopher B. Servier on the brief), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Richmond County (Collini, J.), dated February 5, 2010, 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.

“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, 920-921, *lv denied* _____NY2d_____, 2011 NY Slip Op 76743 [2011], quoting Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006]; *see People v Cruz*, 74 AD3d 1305, 1306). Here, 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 Sivells*, 83 AD3d 1027; *People v Bussie*, 83 AD3d 920).

July 12, 2011

PEOPLE OF STATE OF NEW YORK v ALSTON

Page 1.

The defendant's remaining contentions are improperly raised for the first time on appeal.

RIVERA, J.P., FLORIO, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court