

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

D32011
Y/kmb

_____AD3d_____

Submitted - April 21, 2011

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2009-08718

DECISION & ORDER

People of State of New York, respondent,
v Richard Flowers, appellant.

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

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

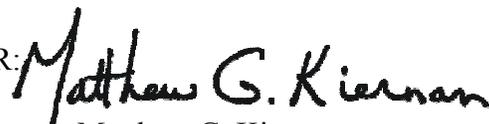
Appeal by the defendant from an order of the Supreme Court, Kings County (Dowling, J.), dated September 1, 2009, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

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

“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, *lv denied* _____NY3d_____, 2011 NY Slip Op 76743 [2011], 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). Contrary to the defendant’s contention, the fact that he was assigned 20 points under risk factor five (victim was 11 through 16 years of age), when the victim of his sexual assault was close to the age of 17, did not result in an over-assessment of the risk he posed to public safety.

PRUDENTI, P.J., ANGIOLILLO, DICKERSON and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan

July 5, 2011

PEOPLE OF STATE OF NEW YORK v FLOWERS

Clerk of the Court

July 5, 2011

PEOPLE OF STATE OF NEW YORK v FLOWERS