

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

D32419
W/kmb

_____AD3d_____

Submitted - September 13, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-09436

DECISION & ORDER

People of State of New York, respondent,
v Anthony Mondo, appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera of counsel),
for respondent.

Appeal by the defendant from an order of the Supreme Court, Suffolk County (Kahn, J.), dated September 7, 2010, 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.

“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* 17 NY3d 704, quoting Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006 ed.]; *see People v Alston*, 86 AD3d 553, 554). Here, the Supreme Court properly determined that the defendant was not entitled to a downward departure and, thus, properly designated the defendant a level two sex offender (*see People v Padro*, 84 AD3d 1046, *lv denied* _____NY3d_____, 2011 NY Slip Op 84341 [2011]).

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

October 4, 2011

PEOPLE OF STATE OF NEW YORK v MONDO