

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

D32709
O/ct

_____AD3d_____

Submitted - October 11, 2011

WILLIAM F. MASTRO, J.P.
RANDALL T. ENG
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2010-10050

DECISION & ORDER

People of State of New York, respondent,
v Apolonio Abreu, appellant.

Lynn W.L. Fahey, New York, N.Y. (Katherine A. Levine of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Linda Breen of counsel; Reuben Arnold on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Dowling, J.), dated September 22, 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.

The People established, by clear and convincing evidence, that the defendant strangled his rape victim to death. Accordingly, he was presumptively designated a level three sex offender pursuant to the automatic override which applies to offenders who have inflicted serious physical injury or caused the death of the victim (*see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, at 3-4 [2006 ed.]; *People v Carter*, 85 AD3d 995, *lv denied*, _____NY3d_____, 2011 NY Slip Op 86305 [2011] ; *People v Fareira*, 80 AD3d 589, 590; *People v Martin*, 79 AD3d 717, 718; *People v King*, 74 AD3d 1162, 1163). Further, the Supreme Court properly determined that the defendant was not entitled to a downward departure from his presumptive risk level (*see People v Livingston*, 87 AD3d 628; *People v Alston*, 86 AD3d 553, 554; *People v Carter*, 85 AD3d at 995-996; *People v Bussie*, 83 AD3d 920).

MASTRO, J.P., ENG, BELEN and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

November 1, 2011

PEOPLE OF STATE OF NEW YORK v ABREU