

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

D34060
N/prt

_____AD3d_____

Submitted - February 3, 2012

RUTH C. BALKIN, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-08698

DECISION & ORDER

People of State of New York, respondent,
v Tyrone Gant, appellant.

Steven Banks, New York, N.Y. (Susan Epstein 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 (Garnett, J.), dated September 8, 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.

The defendant contends that the Supreme Court erred in denying his application for a downward departure from his presumptive level three risk assessment. “However, a court may not downwardly depart from the presumptive risk level unless it concludes that there exists a mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines” (*People v Martin*, 90 AD3d 728, 728; *see People v Bowden*, 88 AD3d 972, 972, *lv denied* 2012 WL 445938, 2012 NY LEXIS 188 [table]; Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 4 [2006 ed.]).

Here, the defendant failed to demonstrate, by a preponderance of the evidence, the existence of a mitigating factor of a kind, or to a degree, that was not adequately taken into account by the risk assessment guidelines and that would justify a downward departure (*see People v Martin*,

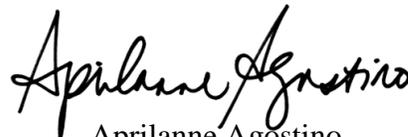
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90 AD3d 728; *People v Wyatt*, 89 AD3d 112, 127-128, *lv denied* 2012 WL 43762, 2012 NY LEXIS 34 [table]; *People v Bowden*, 88 AD3d at 972). Accordingly, the Supreme Court properly denied the defendant's application for a downward departure from his presumptive risk level status.

BALKIN, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court