

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

D34488
O/prt

_____AD3d_____

Submitted - March 6, 2012

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2011-00467

DECISION & ORDER

People of State of New York, respondent,
v Jason Russo, appellant.

Anthony J. Colleluori, Melville, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Steven A. Bender and Richard Longworth Hecht of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Westchester County (Cacace, J.), dated November 29, 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.

Contrary to the defendant's contention, the People met their burden of establishing by clear and convincing evidence that the defendant should be designated a level three sex offender pursuant to Correction Law article 6-C (hereinafter SORA; *see* Correction Law § 168-n[3]; *People v Johnson*, 11 NY3d 416; *People v Crandall*, 90 AD3d 628, 629; *People v Wyatt*, 89 AD3d 112, 118, *lv denied* 18 NY3d 803). Further, the County Court providently exercised its discretion in denying the defendant's request for a downward departure to level two, since the defendant failed to meet his burden of establishing, by a preponderance of the evidence, the existence of a mitigating factor of a kind or to a degree that is otherwise not adequately taken into account by the SORA Risk

April 17, 2012

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Assessment Guidelines (*see People v Johnson*, 11 NY3d at 421; *People v Wyatt*, 89 AD3d at 119-121).

DILLON, J.P., ANGIOLILLO, BELEN and COHEN, 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