

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

D34544
H/kmb

_____AD3d_____

Argued - March 16, 2012

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-10763

DECISION & ORDER

People of State of New York, respondent, v
Michael Linton, appellant.

Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli and Anna Pervukhin of counsel),
for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Morgan J.
Dennehy, and Anthea Bruffee of counsel; Jaclyn Goodman on the brief), for
respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Marrus,
J.), dated November 17, 2009, which, after a hearing, designated him a level three sex offender and
a sexually violent offender pursuant to Correction Law article 6-C.

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

The Supreme Court did not improvidently exercise its discretion in declining to
downwardly depart from the presumptive risk level, since the defendant failed to establish a ground
for a downward departure by a preponderance of the evidence (*see Sex Offender Registration Act:
Risk Assessment Guidelines and Commentary*, at 4 [2006 ed.]; *People v Fernandez*, 91 AD3d 737;
People v Wyatt, 89 AD3d 112, 129-130, *lv denied* 18 NY3d 803).

Although a defendant in a SORA proceeding may be entitled to the appointment of
an expert upon a court's finding that expert services are necessary (*see County Law § 722-c*), the
Supreme Court here did not err in declining the defendant's request for the appointment of a

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psychiatrist to assist him in seeking a downward departure. The defendant did not establish that appointment of an expert was necessary. Moreover, the denial of the defendant's request did not violate his right to due process of law (*cf. Ross v Moffitt*, 417 US 600, 616).

BALKIN, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court