

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

D34921
G/kmb

____AD3d____

Submitted - April 12, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2009-04998

DECISION & ORDER

People of State of New York, respondent, v
Edward Williams, appellant.

Del Atwell, East Hampton, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Dutchess County (Hayes, J.), dated April 14, 2009, which, after a hearing, inter alia, designated him a level three sex offender pursuant to Correction Law article 6-C.

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

In establishing a defendant's appropriate risk level under the Sex Offender Registration Act (*see* Correction Law art 6-C), the People bear the burden of proving the facts supporting the determination by clear and convincing evidence (*see* Correction Law § 168-n[3]; *People v Williams*, 90 AD3d 880, 881; *People v Crandall*, 90 AD3d 628, 629). Here, the People satisfied their burden of adducing facts in support of the assessment of 20 points under risk factor 3 (number of victims) by clear and convincing evidence. The presentence report and the case summary prepared by the Board of Examiners of Sex Offenders constituted "reliable hearsay" (Correction Law § 168-n[3]), and provided a sufficient basis for the assessment of those points (*see People v Mingo*, 12 NY3d 563, 573; *People v Williams*, 90 AD3d at 881).

The defendant's remaining contentions are without merit.

May 15, 2012

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Accordingly, the County Court correctly designated the defendant a level three sex offender.

RIVERA, J.P., CHAMBERS, ROMAN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court