

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

D35365
C/hu

_____AD3d_____

Submitted - May 24, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2010-04482

DECISION & ORDER

People of State of New York, respondent,
v William Duff, appellant.

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Anne E. Oh of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Kahn, J.), dated January 25, 2010, which, after a hearing, designated him a level three sexually violent offender pursuant to Correction Law article 6-C.

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

In this proceeding to determine the defendant's risk level pursuant to the Sex Offender Registration Act (*see* Correction Law § 168-a *et seq.*), the County Court properly relied upon the complainant's sworn statement to the police and grand jury testimony (*see* Correction Law § 168-n[3]; *People v Pettigrew*, 14 NY3d 406, 408-409; *People v Mingo*, 12 NY3d 563, 574; *People v Carleo*, 82 AD3d 1067, 1069; *People v Neal*, 73 AD3d 1145; *People v Bolton*, 50 AD3d 990). Moreover, the County Court properly assessed the defendant 20 points under risk factor 6, as the complainant's sworn statement to the police and grand jury testimony established that the complainant was asleep at the beginning of the incident and was thus "physically helpless" (*see* Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 11 [2006 ed.]; Penal Law § 130.00[7]; *People v Edwards*, 93 AD3d 1210, 1211; *People v Howell*, 82 AD3d 857; *People v Caban*, 61 AD3d 834, 835; *People v Vaughn*, 26 AD3d 776, 777; *People v Irving*, 151 AD2d 605,

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605-606).

DILLON, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court