

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

D35528
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_____AD3d_____

Submitted - June 1, 2012

ANITA R. FLORIO, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
ROBERT J. MILLER, JJ.

2011-01393

DECISION & ORDER

People of State of New York, respondent, v
Collin Carter, appellant.

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel; Molly Talbert on the brief), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Morgan J. Dennehy, and Melissa Causey of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Gary, J.), dated January 26, 2011, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

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

The Supreme Court properly determined that the assessment of five points under risk factor two (sexual contact with the victim — contact over clothing), was supported by clear and convincing evidence. Specifically, the case summary and supplemental incident report relied upon by the hearing court indicated that the defendant touched the infant victim's buttocks over her clothing during the subject incident (*see People v Mingo*, 12 NY3d 563, 571; *People v Perser*, 29 AD3d 767; *People v Boykin*, 127 AD2d 1004). Additionally, the assessment of 15 points under risk factor 11, based on a history of drug or alcohol abuse, was supported by clear and convincing evidence. The case summary and supplemental incident report indicated that the defendant had been abusing methamphetamine at the time of the subject incident (*see People v Crandall*, 90 AD3d 628, 629-630; *People v Morales*, 33 AD3d 982, 983). Thus, the Supreme Court properly designated the

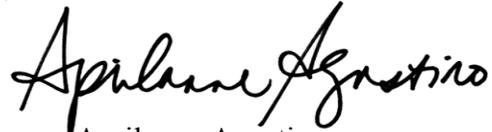
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defendant a level two sex offender.

FLORIO, J.P., BALKIN, HALL and MILLER, 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