

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

D36094
C/hu

_____AD3d_____

Submitted - June 22, 2012

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2010-06453

DECISION & ORDER

People of State of New York, respondent, v Wayne
James, also known as Carl Wayne James, appellant.

Scott M. Bishop, White Plains, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Laurie Sapakoff and Steven
Bender of counsel), for respondent.

Appeal by the defendant, as limited by his brief, from so much of an order of the
County Court, Westchester County (Cacace, J.), entered April 30, 2010, as, after a hearing,
designated him a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed insofar as appealed from, without costs or
disbursements.

The County Court properly assessed the defendant 10 points under risk factor 10 of
the Sex Offender Registration Act Guidelines (*see* Sex Offender Registration Act: Risk Assessment
Guidelines and Commentary [2006 ed] [hereinafter SORA Guidelines]), based on the recency of a
prior felony committed by the defendant. The People established, by clear and convincing evidence,
consisting of the case summary and his presentence report, that the defendant had been released from
prison to parole for a felony conviction in Maryland less than three years before he committed the
sex offenses underlying the present SORA adjudication (*see* Correction Law § 168-n[3]; *People v*
Mingo, 12 NY3d 567, 571-573; *People v Williams*, 95 AD3d 1093, *lv denied* _____NY3d_____,
2012 NY Slip Op 8346 [2012]; *People v Crandall*, 90 AD3d 628, 629; *People v Maldonado*, 79
AD3d 1804, 1804-1805; *People v Pendelton*, 50 AD3d 659; *Matter of State of New York v J.A.*, 21
Misc 3d 806, 816; *People v Barnes*, 6 Misc 3d 469, 471; *cf. People v Brown*, 25 AD3d 924).

The County Court also properly assessed the defendant 10 points under risk factor

October 10, 2012

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12 of the SORA Guidelines, as the People established, by clear and convincing evidence, that he did not genuinely accept responsibility for the acts constituting the underlying sex offenses, notwithstanding his completion of a sex offender treatment program in 2010, while he was incarcerated (*see People v Perry*, 85 AD3d 890; *People v Baker*, 57 AD3d 1472, 1473; *People v Fortin*, 29 AD3d 765, 766; *People v Mitchell*, 300 AD2d 377, 378; *People v Barnes*, 6 Misc 3d at 477; *see also People v Heichel*, 20 AD3d 934, 935; *People v Ramos*, 25 Misc 3d 533, 541).

MASTRO, J.P., SKELOS, FLORIO and HALL, 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