

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

D36296
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_____AD3d_____

Submitted - September 21, 2012

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-00346

DECISION & ORDER

People of State of New York, respondent,
v Kevin Williams, 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 and Linda Breen of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Marrus, J.), dated December 16, 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.

The Supreme Court properly determined that the assessment of 15 points under risk factor 11 (“Drug or Alcohol Abuse-History of Abuse”), was supported by clear and convincing evidence. Specifically, based upon the case summary and probation report relied upon by the hearing court (*see People v Mingo*, 12 NY3d 563, 571; *People v Lewis*, 37 AD3d 689), the defendant had a history of substance abuse, and further, the defendant had admitted that his marijuana use may have caused him to commit one of the underlying offenses (*see People v Robinson*, 55 AD3d 708). Additionally, the assessment of 10 points under risk factor 13 (“Conduct while confined/supervised -Unsatisfactory”) was supported by clear and convincing evidence. The defendant’s unsatisfactory conduct during his incarceration was established by the case summary, which revealed that he recently committed a Tier III disciplinary violation (*see People v Mabee*, 69 AD3d 820, 821). Thus,

the Supreme Court properly designated the defendant a level three sexually violent offender.

FLORIO, J.P., DICKERSON, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court