

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

D36399
C/kmb

_____AD3d_____

Submitted - September 20, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-04454

DECISION & ORDER

People of State of New York, respondent,
v Jesus Delvalle, appellant.

Lynn W. L. Fahey, New York, N.Y. (Katherine A. Levine of counsel), for appellant.

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

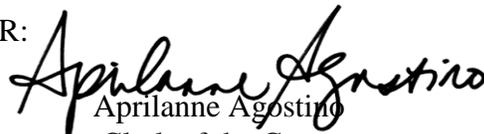
Appeal by the defendant from an order of the Supreme Court, Kings County (Gary, J.), dated May 6, 2011, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

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

The defendant contends that the Supreme Court erred in denying his request for a downward departure from a presumptive risk level three designation to a risk level one designation pursuant to the Sex Offender Registration Act (*see* Correction Law art 6-C; hereinafter SORA) following a risk assessment hearing. However, although the defendant identified a mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the SORA Risk Assessment Guidelines and Commentary, and established the facts in support of that mitigating factor by a preponderance of the evidence, the Supreme Court did not improvidently exercise its discretion in downwardly departing from the defendant's presumptive risk level three designation to a level two designation, rather than to a level one designation (*see generally People v Wyatt*, 89 AD3d 112).

ENG, P.J., SKELOS, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

November 14, 2012

PEOPLE OF STATE OF NEW YORK v DELVALLE