

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

D36540
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_____AD3d_____

Submitted - November 1, 2012

ANITA R. FLORIO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-05655

DECISION & ORDER

People of State of New York, respondent,
v Philip Farrice, appellant.

Lynn W. L. Fahey, New York, N.Y. (Anna Pervukhin of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Richmond County (Rienzi, J.), dated May 13, 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.

Contrary to the defendant's contention, the Supreme Court properly assessed the defendant 10 points under risk factor 12 for failing to genuinely accept responsibility, as required by the Sex Offender Registration Act: Risk Assessment Guidelines and Commentary. According to the presentence investigation report relied upon by the hearing court (*see People v Mingo*, 12 NY3d 563, 571; *People v James*, 99 AD3d 775), during an interview with the Probation Department, the defendant minimized the underlying sexual offense and, alternatively, denied that he performed the criminal sexual act which formed the basis for the conviction (*see People v Perry*, 85 AD3d 890; *see also People v Vega*, 79 AD3d 718, 719). Accordingly, the defendant was properly designated a level three sexually violent offender.

FLORIO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

November 28, 2012

PEOPLE OF STATE OF NEW YORK v FARRICE