

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

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_____AD3d_____

Submitted - December 19, 2017

L. PRISCILLA HALL, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
LINDA CHRISTOPHER, JJ.

2015-10135

DECISION & ORDER

People of State of New York, respondent,
v Gary Cox, appellant.

Paul Skip Laisure, New York, NY (Samuel Brown of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Morgan J. Dennehy of counsel; Walker Halstad on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Michael J. Brennan, J.), dated September 23, 2015, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

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

The defendant appeals from his designation as a level three sex offender pursuant to the Sex Offender Registration Act (*see* Correction Law art 6-C; hereinafter SORA).


The Supreme Court properly determined that the defendant was presumptively a level three sex offender as a result of the automatic override resulting from his two prior felony convictions for sex crimes (*see People v Locklear*, 154 AD3d 888, 889; *People v Fessel*, 149 AD3d 1113, 1114).

The Supreme Court also providently exercised its discretion in denying the defendant's application, in effect, for a downward departure from his presumptive risk level designation. To the extent that the defendant contends that he was entitled to a downward departure as a result of his unblemished prison disciplinary record, his contention is unpreserved for appellate review, as he did not rely on this factor before the Supreme Court (*see People v Cosby*, 154 AD3d

789, 790; *People v Jara*, 150 AD3d 1159). In any event, even assuming that the factors identified by the defendant constituted mitigating circumstances not adequately taken into account by the Sex Offender Registration Act: Risk Assessment Guidelines and Commentary (2006), the totality of the circumstances did not warrant a departure to avoid an over-assessment of the defendant's dangerousness and risk of sexual recidivism (*see People v Gillotti*, 23 NY3d 841, 861; *People v Goldman*, 150 AD3d 905, 906-907).

HALL, J.P., AUSTIN, SGROI and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court