

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

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_____AD3d_____

Submitted - November 2, 2017

REINALDO E. RIVERA, J.P.
JEFFREY A. COHEN
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON, JJ.

2016-06811

DECISION & ORDER

People of State of New York, respondent,
v Darrell McKinney, appellant.

Paul Skip Laisure, New York, NY (Tammy E. Linn of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Morgan J. Dennehy, and Kenneth Blake of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Alan Marrus, J.), dated April 14, 2016, 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.

A defendant seeking a downward departure from his or her presumptive risk level must identify mitigating circumstances that are of a kind, or to a degree, not adequately taken into account by the Sex Offender Registration Act: Risk Assessment Guidelines and Commentary (2006) (hereinafter the SORA Guidelines) and must prove the existence of those circumstances by a preponderance of the evidence (*see People v Gillotti*, 23 NY3d 841, 861, 864; *People v Wyatt*, 89 AD3d 112, 128). If the defendant satisfies that burden, “the law permits a departure, but the court still has discretion to refuse to depart or to grant a departure” (*People v Gillotti*, 23 NY3d at 861).

Here, the alleged mitigating circumstances identified by the defendant either were adequately taken into account by the SORA Guidelines, or were not proven by a preponderance of the evidence (*see People v Nieves*, 149 AD3d 881, 882; *People v Sanchez*, 138 AD3d 946, 947). Accordingly, the Supreme Court properly denied his request for a downward departure from his

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presumptive designation as a level three sex offender.

RIVERA, J.P., COHEN, HINDS-RADIX and BRATHWAITE NELSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court