

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

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_____AD3d_____

Submitted - November 16, 2017

REINALDO E. RIVERA, J.P.
JEFFREY A. COHEN
ROBERT J. MILLER
BETSY BARROS, JJ.

2015-04847

DECISION & ORDER

People of State of New York, respondent,
v Jeffrey Hallett, appellant.

Paul Skip Laisure, New York, NY (Rebecca J. Gannon of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Anthea H. Bruffee of counsel; Alexander Brennan on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Mondo, J.), dated May 29, 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.

Contrary to the defendant's contention, he was not entitled to a downward departure from his presumptive risk level. "A court determining a defendant's risk level under the Sex Offender Registration Act (hereinafter SORA) may not downwardly depart from the presumptive risk level unless the defendant first identifies and proves by a preponderance of the evidence the facts in support of 'a mitigating factor of a kind, or to a degree, that is not otherwise adequately taken into account by the SORA Guidelines'" (*People v Warren*, 152 AD3d 551, 551, quoting *People v Lathan*, 129 AD3d 686, 687; see *People v Gillotti*, 23 NY3d 841, 861; *People v Wyatt*, 89 AD3d 112, 128; see also Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006]).

While a defendant's response to treatment may qualify as a ground for a downward departure where the response is exceptional (see *People v Washington*, 84 AD3d 910, 911), here, the defendant failed to establish by a preponderance of the evidence that his response to treatment was


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exceptional (*see People v Velasquez*, 145 AD3d 924, 924; *People v Wallace*, 144 AD3d 775, 776, *lv denied* 26 NY3d 1129; *People v Figueroa*, 138 AD3d 708, 709). Accordingly, the Supreme Court properly denied his request for a downward departure and designated him a level three sex offender.

RIVERA, J.P., COHEN, MILLER and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court