

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

D54816  
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Submitted - November 28, 2017

MARK C. DILLON, J.P.  
LEONARD B. AUSTIN  
SANDRA L. SGROI  
BETSY BARROS, JJ.

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2015-02733

DECISION & ORDER

People of State of New York, respondent, v  
Demetrius Williams, appellant.

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Seymour W. James, Jr., New York, NY (Kerry Elgarten of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Michael J. Brennan, J.), dated December 10, 2014, which, after a hearing, designated him a level three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Kings County, for a new hearing and a new determination in accordance herewith before a different Justice.

“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]).

In this case, during the SORA hearing, the Supreme Court improperly, sua sponte, curtailed the defendant’s testimony and arguments in support of, inter alia, his request for a downward departure. Accordingly, we reverse the order appealed from, and remit for a new hearing

March 14, 2018


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and a new determination in accordance herewith.

The defendant's remaining contentions are without merit.

DILLON, J.P., AUSTIN, SGROI and BARROS, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court