

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

D55444
T/htr

_____AD3d_____

Submitted - December 8, 2017

WILLIAM F. MASTRO, J.P.
SHERI S. ROMAN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2014-08650

DECISION & ORDER

People of State of New York, respondent,
v Terrance Jordan, appellant.

(Ind. No. 2237/12)

Seymour W. James, Jr., New York, NY (Anita Aboagye-Agyeman of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Joyce Adolfsen of counsel; Gregory Musso on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Ann Donnelly, J.), dated September 9, 2014, which, after a hearing, designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed.

The defendant was designated a level two sex offender pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*; hereinafter SORA). On appeal, the defendant contends that the Supreme Court erred in denying his application for a downward departure from his presumptive risk level.

A defendant seeking a downward departure from the presumptive risk level has the initial burden of “(1) identifying, as a matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the [SORA] Guidelines; and (2) establishing the facts in support of its existence by a preponderance of the evidence” (*People v Wyatt*, 89 AD3d 112, 128; *see People v Gillotti*, 23 NY3d 841, 861; *see also* Sex Offender

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Registration Act: Risk Assessment Guidelines and Commentary at 4 [2006] [hereinafter the Guidelines]). Here, the mitigating circumstances identified by the defendant either were adequately taken into account by the Guidelines (*see People v Robinson*, 145 AD3d 805, 806; *People v Torres*, 124 AD3d 744, 745-746), or did not warrant a downward departure from the presumptive risk level (*see People v Watson*, 95 AD3d 978, 979).

Accordingly, we agree with the Supreme Court's determination denying the defendant's request for a downward departure and designating him a level two sex offender.

MASTRO, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER: 

Aprilanne Agostino
Clerk of the Court