

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

D55459
C/htr

_____AD3d_____

Submitted - February 2, 2018

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
JEFFREY A. COHEN
ANGELA G. IANNACCI, JJ.

2015-08986

DECISION & ORDER

People of State of New York, respondent,
v Sheldon Sealey, appellant.

Seymour W. James, Jr., New York, NY (Bonnie C. Brennan 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 (Elizabeth Foley, J.), dated August 20, 2015, which, after a hearing, designated him a level two 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, the People established by clear and convincing evidence that the defendant was properly assessed 15 points for his history of drug abuse on the Risk Assessment Instrument (hereinafter the RAI) prepared by the Board of Examiners of Sex Offenders (*see People v Palmer*, 20 NY3d 373).

A defendant seeking a downward departure from the presumptive risk level established by the RAI 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 [Sex Offender Registration Act] 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 Registration Act: Risk Assessment Guidelines and Commentary* at 4 [2006]). The defendant failed to identify mitigating factors not already taken

into account in the RAI (*see People v Jordan*, 136 AD3d 697).

Accordingly, we agree with the Supreme Court's denial of the defendant's application for a downward departure from his presumptive designation as a level two sex offender.

MASTRO, J.P., DILLON, COHEN and IANNACCI, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court