

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

D55902  
G/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 16, 2018

JOHN M. LEVENTHAL, J.P.  
ROBERT J. MILLER  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2017-07202

DECISION & ORDER

People of State of New York, respondent,  
v Stephen Joseph, appellant.

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Laurette D. Mulry, Riverhead, NY (Kirk R. Brandt of counsel), for appellant.

Timothy D. Sini, District Attorney, Riverhead, NY (Grazia DiVincenzo of counsel),  
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Barbara Kahn, J.), dated June 21, 2017, 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.

The defendant appeals from an order, made after a hearing, designating him a level two sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C; hereinafter SORA).

Contrary to the defendant's contention, the County Court properly assessed 15 points under risk factor 11 of the risk assessment instrument, since the People established, by clear and convincing evidence, that the defendant had a history of drug or alcohol abuse (*see People v Dipilato*, 155 AD3d 792, 793; *People v Dallas*, 122 AD3d 698, 699). Further, the defendant's contention that certain factors warrant a downward departure from his presumptive risk level is unpreserved for appellate review because he did not raise these grounds at the SORA hearing (*see People v Figueroa*, 138 AD3d 708, 709). In any event, we agree with the County Court's determination that the defendant was not entitled to a downward departure (*see People v Destio*, 145 AD3d 1047, 1048; *People v Quinones*, 138 AD3d 1082, 1083).

July 5, 2018

PEOPLE OF STATE OF NEW YORK v JOSEPH

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Accordingly, the defendant was properly designated a level two sex offender.

LEVENTHAL, J.P., MILLER, DUFFY and LASALLE, 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