

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

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_____AD3d_____

Submitted - May 17, 2018

JOHN M. LEVENTHAL, J.P.
BETSY BARROS
VALERIE BRATHWAITE NELSON
ANGELA G. IANNACCI, JJ.

2014-06884

DECISION & ORDER

People of State of New York, respondent, v Darin
Ruffin, appellant.

The Legal Aid Society, New York, NY (Adrienne M. Gantt of counsel; Adrienne
Isaacson on the brief), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Jean M. Joyce
of counsel; Marielle Burnett on the brief), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County
(Raymond Guzman, J.), dated June 5, 2014, 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.

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 [Sex Offender
Registration Act (hereinafter 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* SORA: Risk Assessment Guidelines and Commentary at 4
[2006]). If the defendant makes that twofold showing, the court must exercise its discretion by
weighing the mitigating factor to determine whether the totality of the circumstances warrants a
departure to avoid an over-assessment of the defendant’s dangerousness and risk of sexual
recidivism (*see People v Gillotti*, 23 NY3d at 861; *People v Champagne*, 140 AD3d 719, 720).

September 19, 2018

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Here, since the factors identified by the defendant were either adequately taken into account by the Guidelines, or were not proven by a preponderance of the evidence, the Supreme Court did not have the discretion to depart from his presumptive risk level (*see People v Curry*, 158 AD3d 52, 60-62; *People v Rocano-Quintana*, 149 AD3d 1114, 1115). Accordingly, we agree with the Supreme Court's determination denying the defendant's application for a downward departure from his presumptive risk level three.

LEVENTHAL, J.P., BARROS, BRATHWAITE NELSON and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court