

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

D56638  
G/htr

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

Submitted - March 29, 2018

WILLIAM F. MASTRO, J.P.  
SHERI S. ROMAN  
BETSY BARROS  
ANGELA G. IANNACCI, JJ.

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2011-06852

DECISION & ORDER

People of State of New York, respondent,  
v Edward Amorin, appellant.

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Thomas R. Villecco, Jericho, NY, for appellant.

Anthony A. Scarpino, Jr., District Attorney, White Plains, NY (William C. Milaccio  
and Steven A. Bender of counsel), for respondent.

Appeal by the defendant from an order of the County Court, Westchester County  
(Susan Cacace, J.), entered June 2, 2011. The order, after a hearing, designated the defendant a level  
three sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements.

The defendant pleaded guilty to rape in the first degree, assault in the second degree,  
and unlawful imprisonment in the first degree. Following a hearing pursuant to the Sex Offender  
Registration Act (*see* Correction Law art 6-C; hereinafter SORA), the County Court granted the  
People’s application for an upward departure from the presumptive risk level two designation, and  
designated the defendant a level three sex offender. On appeal, the defendant contends that the court  
should have denied the People’s request for an upward departure.

“An upward departure from the presumptive risk level is permitted only if the court  
determines, upon clear and convincing evidence, ‘that there exists an aggravating . . . factor of a  
kind, or to a degree, that is otherwise not adequately taken into account by the [SORA]  
[G]uidelines’” (*People v Diaz*, 151 AD3d 891, 891, quoting SORA: Risk Assessment Guidelines  
and Commentary at 4 [2006]; *see People v Gillotti*, 23 NY3d 841, 861; *People v Ziliox*, 145 AD3d  
925). Here, the People presented clear and convincing evidence of aggravating factors not  
adequately taken into account by the SORA Guidelines, including, inter alia, the defendant’s

subsequent criminal conduct following the underlying sex offense (*see People v Palmer*, 68 AD3d 1364, 1366), and his history of violence with the complainant (*see People v Shim*, 139 AD3d 68, 77; *People v James*, 45 AD3d 555, 556; *People v Mudd*, 43 AD3d 1128, 1129). Accordingly, we agree with the County Court's determination to grant the People's application for an upward departure from the presumptive risk level and to designate the defendant a level three sex offender.

MASTRO, J.P., ROMAN, BARROS and IANNACCI, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court