

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

D57290
G/htr

_____AD3d_____

Submitted - October 12, 2018

ALAN D. SCHEINKMAN, P.J.
WILLIAM F. MASTRO
JOSEPH J. MALTESE
BETSY BARROS, JJ.

2017-10601

DECISION & ORDER

People of State of New York, respondent,
v Todd Slavik, appellant.

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

Timothy D. Sini, District Attorney, Riverhead, NY (Michael J. Brennan of counsel),
for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Barbara Kahn, J.), dated September 8, 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.

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* Sex Offender Registration Act: 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).

Although response to treatment may qualify as a ground for a downward departure where the response is exceptional, here, the defendant failed to prove by a preponderance of the

evidence that his response to treatment was exceptional (*see People v Rameriz*, 163 AD3d 1012; *People v Santiago*, 137 AD3d 762, 764; *People v Dyson*, 130 AD3d 600, 601). The defendant has otherwise failed to set forth any mitigating factors warranting a downward departure from his presumptive designation as a level two sex offender.

SCHEINKMAN, P.J., MASTRO, MALTESE and BARROS, 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