

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

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_____AD3d_____

Submitted - November 20, 2008

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
RUTH C. BALKIN
WILLIAM E. McCARTHY, JJ.

2007-06118

DECISION & ORDER

People of State of New York, etc., respondent,
v Joseph Cooke, appellant.

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart
of counsel), for respondent.


Appeal by the defendant from an order of the Supreme Court, Richmond County
(Rienzi, J.), dated June 1, 2007, 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 downward departure from the presumptive risk level recommended by the Board
of Examiners of Sex Offenders in the Risk Assessment Instrument, in this case, risk level three, is
warranted only upon a showing by the defendant, by clear and convincing evidence, that there were
mitigating factors that were not properly taken into account by the guidelines. Since the defendant
failed to make that showing, a downward departure was not warranted (*see People v Guaman*, 8
AD3d 545).

MASTRO, J.P., MILLER, BALKIN and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

December 16, 2008

PEOPLE OF STATE OF NEW YORK v COOKE