

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1164

KA 08-01254

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARK A. THOMPSON, DEFENDANT-APPELLANT.

JAY D. CARR, OLEAN, FOR DEFENDANT-APPELLANT.

EDWARD M. SHARKEY, DISTRICT ATTORNEY, LITTLE VALLEY (LORI PETTIT RIEMAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Cattaraugus County Court (Larry M. Himelein, J.), entered May 14, 2008. The order determined that defendant is a level two risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: On appeal from an order determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.), defendant contends that County Court erred in assessing points against him for a history of substance abuse and that the People failed to establish by clear and convincing evidence that his risk of repeat offense was moderate. We reject that contention. The court's risk level assessment is supported by the reliable hearsay contained in the case summary and the presentence report (see generally *People v Ramos*, 41 AD3d 1250, lv denied 9 NY3d 809; *People v Jordan*, 31 AD3d 1196, lv denied 7 NY3d 714). Although defendant further contends that the People failed to establish by clear and convincing evidence that he failed to accept responsibility for his criminal behavior, the record in fact reflects that the court did not assess any points against him based on that risk factor.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court