

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

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**KA 10-02420**

PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HOWARD B. WASHINGTON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Monroe County Court (Frank P. Geraci, Jr., J.), entered October 29, 2010. 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: Defendant appeals from an order determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). Contrary to defendant's contention, County Court's determination that he established a relationship with the victim for the purpose of victimization is supported by the requisite clear and convincing evidence (*see* § 168-n [3]). "The guidelines assess 20 points if the offender's crime . . . was directed at . . . a person with whom a relationship had been established . . . for the primary purpose of victimization" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 12 [2006]). Here, the record establishes that defendant invited the victim, a 13-year-old girl who had run away from home and with whom he had no prior relationship, into his home and then had sexual intercourse with her several times in the ensuing two days. Thus, the record supports the determination of the court that defendant's primary purpose in establishing the relationship with the 13-year-old girl was for the purpose of victimizing her (*see generally People v Carlton*, 307 AD2d 763).

Entered: January 31, 2012

Frances E. Cafarell  
Clerk of the Court