

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

222

**KA 15-00909**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, DEJOSEPH, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL A. KING, JR., DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Genesee County Court (Robert C. Noonan, J.), dated April 24, 2015. 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: We reject defendant's contention that County Court erred in determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). Even assuming, arguendo, that defendant preserved for our review his contention that the court should have granted him a downward departure to a level one risk, we conclude that his contention is without merit. Defendant failed to allege a mitigating circumstance that is, as a matter of law, of a kind or to a degree not adequately taken into account by the risk assessment guidelines and, to the extent that defendant adequately identified a mitigating circumstance, he failed to prove its existence by a preponderance of the evidence (*see People v Gillotti*, 23 NY3d 841, 861; *People v Voymas*, 122 AD3d 1336, 1337, *lv denied* 25 NY3d 913; *see also People v Filkins*, 128 AD3d 1231, 1231-1232, *lv denied* 26 NY3d 904).

Entered: March 24, 2017

Frances E. Cafarell  
Clerk of the Court