

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

1124

KA 16-01948

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALLEN COBB, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Erie County Court (David W. Foley, A.J.), entered September 19, 2016. The order determined that defendant is a level three 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 three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). Contrary to defendant's contentions, we conclude that County Court properly applied the analysis prescribed by *People v Gillotti* (23 NY3d 841, 861 [2014]) and, in so doing, properly determined that defendant failed to establish by a preponderance of the evidence " 'the existence of the mitigating circumstances' that would justify a downward departure" (*People v Leach*, 158 AD3d 1240, 1241 [4th Dept 2018], *lv denied* 31 NY3d 905 [2018], quoting *Gillotti*, 23 NY3d at 864; see *People v Bernecky*, 161 AD3d 1540, 1541 [4th Dept 2018], *lv denied* 32 NY3d 901 [2018]).

Entered: November 16, 2018

Mark W. Bennett
Clerk of the Court