

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

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**KA 19-00805**

PRESENT: WHALEN, P.J., CARNI, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GUSTAVO ROMAN, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Monroe County Court (Christopher S. Ciaccio, J.), entered January 26, 2019. 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 under risk factors four and five of the risk assessment instrument. As defendant correctly concedes, his contentions are not preserved for our review (*see People v Gillotti*, 23 NY3d 841, 854 [2014]; *People v Saraceni*, 153 AD3d 1561, 1561 [4th Dept 2017], *lv denied* 30 NY3d 1119 [2018]), and we decline to exercise our power to review them as a matter of discretion in the interest of justice (*see People v Charache*, 32 AD3d 1345, 1345 [4th Dept 2006], *affd* 9 NY3d 829 [2007]; *People v Jones*, 15 AD3d 929, 930 [4th Dept 2005]; *see also Saraceni*, 153 AD3d at 1561).

Entered: January 31, 2020

Mark W. Bennett  
Clerk of the Court