

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

726

KA 11-01340

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL ROTTERMAN, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SUSAN C. MINISTERO OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Erie County Court (Kenneth F. Case, J.), entered June 3, 2011. 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 ([SORA] Correction Law § 168 *et seq.*). Contrary to defendant's contention, County Court complied with the statutory mandate to set forth "the findings of fact and conclusions of law on which the determination [is] based" (§ 168-n [3]; *see People v Carter*, 35 AD3d 1023, 1023-1024, *lv denied* 8 NY3d 810). We reject defendant's further contention that the People failed to present clear and convincing evidence to support the assessment of 30 points against him for being armed with a dangerous instrument during the commission of one of the underlying crimes. That assessment is supported by the reliable hearsay contained in the case summary and the presentence report (*see People v Thompson*, 66 AD3d 1455, 1456, *lv denied* 13 NY3d 714; *see generally People v Mingo*, 12 NY3d 563, 573). Defendant failed to preserve for our review his contention that a downward departure from his presumptive risk level was warranted (*see People v Quinones*, 91 AD3d 1302, 1303). Finally, we reject defendant's contention that he was denied effective assistance of counsel at the SORA hearing (*see People v Bowles*, 89 AD3d 171, 181, *lv denied* 18 NY3d 807).

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court