

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

193

**KA 09-01456**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GEORGE E. ROGERS, 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 June 15, 2009. 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: On appeal from an order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.), defendant contends he was entitled to a downward departure from his presumptive risk level. Defendant failed to preserve that contention for our review (see *People v Gilbert*, 78 AD3d 1584, 1585-1586; *People v Kelley*, 64 AD3d 1192, lv denied 13 NY3d 708). In any event, that contention lacks merit inasmuch as defendant failed to " 'present clear and convincing evidence of special circumstances justifying a downward departure' " (*People v Clark*, 66 AD3d 1366, 1367, lv denied 13 NY3d 713; see *People v Sawyer*, 78 AD3d 1517).

Entered: February 18, 2011

Patricia L. Morgan  
Clerk of the Court