

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

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**KA 12-00297**

PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, VALENTINO, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NEIL GILLOTTI, DEFENDANT-APPELLANT.

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DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Niagara County Court (Matthew J. Murphy, III, J.), dated October 17, 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 (Correction Law § 168 *et seq.*). We reject defendant's contention that County Court erred in assessing 10 points against him under risk factor 15, for inappropriate employment. Inasmuch as defendant admitted that he possessed over 1,000 images and videos of child pornography, we conclude that his employment at an amusement park in the vicinity of children is "inappropriate" within the meaning of that risk factor (see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 17-18 [2006]). We further conclude that "defendant failed to present clear and convincing evidence of special circumstances justifying a downward departure" of his risk level (*People v McDaniel*, 27 AD3d 1158, 1159, *lv denied* 7 NY3d 703), particularly in view of the fact that he does not dispute that he possessed pornographic materials depicting sexual violence against children or that he knowingly obtained employment placing him in the vicinity of children (see *People v Poole*, 90 AD3d 1550, 1551; *cf. People v Bretan*, 84 AD3d 906, 907-908).

Entered: March 15, 2013

Frances E. Cafarell  
Clerk of the Court