

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

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KA 11-02402

PRESENT: SMITH, J.P., FAHEY, SCONIERS, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEVIN PORTER, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from an order of the Supreme Court, Monroe County (Frank P. Geraci, Jr., A.J.), entered October 7, 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 Supreme Court erred in assessing 15 points against him under risk factor 14, for release without supervision. Inasmuch as defendant served his sentence in a local jail and he is due to be released without probation or parole supervision, he was properly assessed the points (see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 17 [2006]). Even where, as here, defendant was convicted of a misdemeanor, "[o]nce [Supreme] Court determined that the defendant would be released without supervision, its inquiry was ended, and the assessment of 15 points based upon the absence of postrelease supervision was appropriate" (*People v Lewis*, 37 AD3d 689, 690, *lv denied* 8 NY3d 814). 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).

Entered: March 15, 2013

Frances E. Cafarell
Clerk of the Court