

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

436

**KA 12-00251**

PRESENT: CENTRA, J.P., FAHEY, CARNI, WHALEN, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY RAWLINSON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT 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 Supreme Court, Monroe County (Frank P. Geraci, Jr., A.J.), entered December 16, 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.*). To the extent that defendant contends that Supreme Court improperly assessed 15 points for his history of drug or alcohol abuse as recommended in the risk assessment instrument (RAI) prepared by the Board of Examiners of Sex Offenders, we reject that contention (*see People v Zimmerman*, 101 AD3d 1677, 1678). Even assuming, arguendo, that the court erred in assessing 15 points with respect to that risk factor, we note that defendant would nevertheless have been assessed 110 points under the RAI, which is still a presumptive level three risk. Contrary to his further contention, we conclude that defendant failed to establish his entitlement to a downward departure from the presumptive risk level inasmuch as he failed to present the requisite clear and convincing evidence of special circumstances to warrant such a departure (*see People v Marks*, 31 AD3d 1142, 1143, *lv denied* 7 NY3d 715; *People v McDaniel*, 27 AD3d 1158, 1159, *lv denied* 7 NY3d 703).

Entered: May 3, 2013

Frances E. Cafarell  
Clerk of the Court