

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

448

KA 13-01271

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY J. ENGLANT, DEFENDANT-APPELLANT.

HOGAN WILLIG, PLLC, AMHERST (GEOFFREY GISMONDI OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Orleans County Court (James P. Punch, J.), dated April 9, 2013. 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 under the Sex Offender Registration Act (Correction Law § 168 et seq.). We reject defendant's contention that County Court's assessment of 15 points for history of drug or alcohol abuse, which was based upon the recommendation in the risk assessment instrument prepared by the Board of Examiners of Sex Offenders, is not supported by clear and convincing evidence. The court was entitled to reject defendant's assertions that his prior drug or alcohol use was recreational, occasional, and did not constitute abuse, inasmuch as those assertions are contradicted by his admissions to the Probation Department, as well as his participation in alcohol and substance abuse treatment prior to and during his incarceration (see *People v St. Jean*, 101 AD3d 1684, 1684; *People v Mundo*, 98 AD3d 1292, 1293, lv denied 20 NY3d 855; cf. *People v Palmer*, 20 NY3d 373, 378-379).

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court