

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

440

**KA 10-01076**

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THEODORE MCCOLLUM, DEFENDANT-APPELLANT.

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JONES & MORRIS, VICTOR (MICHAEL A. JONES, JR., OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (BRIAN D. DENNIS  
OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Ontario County Court (Frederick G. Reed, A.J.), dated March 23, 2010. The order denied defendant's petition to modify the determination that he 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 denying his petition pursuant to Correction Law § 168-o (2) seeking to modify the prior determination that he is a level three risk pursuant to the Sex Offender Registration Act (§ 168 *et seq*). "We agree with County Court that defendant failed to meet his 'burden of proving the facts supporting the requested modification by clear and convincing evidence' " (*People v Higgins*, 55 AD3d 1303, quoting § 168-o [2]; see *People v Cullen*, 79 AD3d 1677).

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court