

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

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KA 11-02115

PRESENT: SCUDDER, P.J., FAHEY, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESSIE J. DUKES, 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 August 31, 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 20 points under the risk factor for unsatisfactory conduct while confined or under supervision, based on sexual misconduct by defendant. Contrary to defendant's contention, there is no requirement that the conduct be "recent" in order for the court to assess 20 points in that category. Indeed, the Risk Assessment Guidelines provide that if an offender, "*while in custody or under supervision, has been involved in inappropriate sexual behavior . . . the guidelines assess the offender 20 points*" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 16 [2006] [emphasis added]; see *People v Carpenter*, 60 AD3d 833, 833).

Entered: March 15, 2013

Frances E. Cafarell
Clerk of the Court