

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

660

KA 14-00784

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DEREK NICHOLSON, DEFENDANT-APPELLANT.

HUNT & BAKER, HAMMONDSPORT (BRENDA S. ASTON OF COUNSEL), FOR
DEFENDANT-APPELLANT.

Appeal from an order of the Steuben County Court (Marianne Furfure, A.J.), entered December 26, 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 pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). We reject defendant's contention that reversal is required because County Court failed to state what burden of proof it imposed on defendant's request for a downward departure (*see generally People v Gillotti*, 23 NY3d 841, 861). In any event, we conclude, based upon our review of the record, that defendant failed to establish his entitlement to a downward departure by a preponderance of the evidence (*see People v Merkley*, 125 AD3d 1479, 1479; *see generally Gillotti*, 23 NY3d at 861).

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court