

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

402

KA 15-02073

PRESENT: CENTRA, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARSHAWN T. JOHNSON, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Monroe County Court (Christopher S. Ciaccio, J.), entered October 28, 2015. 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 County Court erred in calculating his risk level by improperly assessing points for his history of substance abuse and his failure to accept responsibility for his crime, we reject that contention (*see generally People v Cathy*, 134 AD3d 1579, 1579; *People v Noriega*, 26 AD3d 767, *lv denied* 6 NY3d 713). Furthermore, the court properly determined that defendant is a presumptive level three risk based upon his prior felony conviction of a sex crime (*see People v Walker*, 146 AD3d 569, 569; *People v Judd*, 29 AD3d 431, 431, *lv denied* 7 NY3d 709).

We have considered defendant's further contention and conclude that it is without merit.

Entered: March 31, 2017

Frances E. Cafarell
Clerk of the Court