

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

117

KA 24-00634

PRESENT: CURRAN, J.P., GREENWOOD, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RAYMOND HOLMAN, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (CLEA WEISS 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 (Victoria M. Argento, J.), dated January 2, 2024. 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: On appeal from an order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*), defendant contends that Supreme Court erred in refusing to grant him a downward departure from risk level three to risk level two. Initially, we agree with the People that, "although the court failed to set forth its findings of fact and conclusions of law in denying defendant's request for a downward departure, the record is sufficient for us to make our own findings of fact and conclusions of law, thereby obviating the need for remittal" (*People v Allis*, 229 AD3d 1375, 1376 [4th Dept 2023] [internal quotation marks omitted]; see *People v Snyder*, 218 AD3d 1356, 1356-1357 [4th Dept 2023], *lv denied* 41 NY3d 902 [2024]). With respect to the merits, even assuming, arguendo, that defendant adequately identified mitigating circumstances that are, as a matter of law, of a kind or to a degree not adequately taken into account by the risk assessment guidelines and proved their existence by a preponderance of the evidence (see generally *People v Gillotti*, 23 NY3d 841, 861 [2014]), we conclude, based upon the totality of the circumstances, that a downward departure is not warranted (see *Allis*, 229 AD3d at

1376; *People v Burgess*, 191 AD3d 1256, 1257 [4th Dept 2021]; see generally *Gillotti*, 23 NY3d at 861).

Entered: March 14, 2025

Ann Dillon Flynn
Clerk of the Court