

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

144

KA 23-01806

PRESENT: WHALEN, P.J., BANNISTER, OGDEN, NOWAK, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT R. RICHMOND, DEFENDANT-APPELLANT.

DAVID C. SCHOPP, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO
(BRAEDAN M. GILLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

KEVIN T. FINNELL, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF
COUNSEL), FOR RESPONDENT.

Appeal from an order of the Genesee County Court (Melissa Lightcap Cianfrini, J.), entered August 18, 2023. 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.*).

Contrary to defendant's contention, County Court did not abuse its discretion in denying his request for a downward departure from his presumptive risk level (*see People v Wilson*, 186 AD3d 1066, 1067 [4th Dept 2020], *lv denied* 36 NY3d 902 [2020]). Although a defendant's response to treatment, " 'if exceptional' (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 17 [2006]), may constitute a mitigating factor to serve as the basis for a downward departure," we conclude that, here, defendant "failed to prove by a preponderance of the evidence that his response to treatment was exceptional" (*People v Bernecky*, 161 AD3d 1540, 1541 [4th Dept 2018], *lv denied* 32 NY3d 902 [2018]). Defendant otherwise "failed to establish by a preponderance of the evidence the existence of mitigating factors not adequately taken into account by the guidelines" (*People v Lewis*, 156 AD3d 1431, 1432 [4th Dept 2017], *lv denied* 31 NY3d 904 [2018]; *see Wilson*, 186 AD3d at 1067; *People v Nilsen*, 148 AD3d 1688, 1689 [4th Dept 2017], *lv denied* 29 NY3d 912 [2017]).

Entered: April 25, 2025

Ann Dillon Flynn
Clerk of the Court