

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

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KA 24-01587

PRESENT: LINDLEY, J.P., MONTOUR, GREENWOOD, NOWAK, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LAMONT TERRY, DEFENDANT-APPELLANT.

HAYDEN M. DADD, CONFLICT DEFENDER, GENESEO (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

ASHLEY WILLIAMS, DISTRICT ATTORNEY, GENESEO, FOR RESPONDENT.

Appeal from an order of the Livingston County Court (Jennifer M. Noto, J.), dated July 18, 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 County Court erred in granting an upward departure from his presumptive classification as a level one risk to a level three risk. We reject that contention. " 'The court's discretionary upward departure [to a level three risk] was based on clear and convincing evidence of aggravating factors to a degree not taken into account by the risk assessment instrument' " (*People v Tidd*, 128 AD3d 1537, 1537 [4th Dept 2015], lv denied 25 NY3d 913 [2015]; see *People v Swartz*, 216 AD3d 1426, 1428 [4th Dept 2023], lv denied 40 NY3d 906 [2023]; *People v Sczerbaniewicz*, 126 AD3d 1348, 1349 [4th Dept 2015]). As the court determined, an upward departure was warranted based on crimes defendant committed after his release from prison on the qualifying offense, including failing to register as a sex offender in North Carolina (see *People v Wright*, 215 AD3d 1258, 1259-1260 [4th Dept 2023], lv denied 40 NY3d 904 [2023]; *People v Perez*, 158 AD3d 1070, 1071 [4th Dept 2018], lv denied 31 NY3d 905 [2018]).

Defendant's subsequent criminal history indicates that he "poses an increased risk to public safety" (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 14 [2006]; see generally *People v Milks*, 28 AD3d 1163, 1164 [4th Dept 2006]), and we cannot conclude that the court, in weighing the aggravating and mitigating

factors, abused its discretion in granting a two-level upward departure (*see generally People v Gillotti*, 23 NY3d 841, 861 [2014]).

Entered: October 3, 2025

Ann Dillon Flynn
Clerk of the Court