

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

**450**

**KA 19-01902**

PRESENT: CENTRA, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PHILIP CONGILARO, DEFENDANT-APPELLANT.

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DANIEL M. GRIEBEL, TONAWANDA, FOR DEFENDANT-APPELLANT.

JEFFREY S. CARPENTER, DISTRICT ATTORNEY, HERKIMER (ELIZABETH S. HEALY OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Herkimer County Court (John H. Crandall, J.), dated August 2, 2019. The order determined that defendant is a level two 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 two risk pursuant to the Sex Offender Registration Act ([SORA] Correction Law § 168 *et seq.*). Defendant failed to preserve for our review his contention that County Court violated his due process rights by accepting his waiver of the right to appear at the SORA hearing (*see People v Poleun*, 26 NY3d 973, 974-975 [2015]; *People v Turner*, 188 AD3d 1746, 1746 [4th Dept 2020], *lv denied* 36 NY3d 910 [2021]). In any event, we conclude that "defendant's right to due process was not violated inasmuch as the record establishes that defendant 'was advised of the [SORA] hearing date, of the right to be present at the hearing, and that the hearing would be conducted in his . . . absence,' and defendant waived his right to be present by informing the court in writing that he did not wish to appear" (*People v Caleb*, 170 AD3d 1618, 1618 [4th Dept 2019], *lv denied* 33 NY3d 910 [2019]). Contrary to defendant's further contention, he has failed to establish that defense counsel was ineffective (*see generally People v Dean*, 169 AD3d 1414, 1415 [4th Dept 2019]).

Entered: April 30, 2021

Mark W. Bennett  
Clerk of the Court