

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

578

KA 08-02401

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARQUIS C. HUCKS, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Frank P. Geraci, Jr., J.), entered October 24, 2008. 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 relying on the case summary prepared by the Board of Examiners of Sex Offenders. We reject that contention. The case summary constitutes reliable hearsay and thus may be considered by the court in determining defendant's risk level (*see People v Howe*, 49 AD3d 1302; *People v Roman*, 41 AD3d 1288, *lv denied* 9 NY3d 809; *People v Vacanti*, 26 AD3d 732, *lv denied* 6 NY3d 714).

Even assuming, arguendo, that defendant's further contention that the court erred in refusing to grant him a downward departure from his presumptive risk level is preserved for our review (*see People v Clark*, 66 AD3d 1366, *lv denied* 13 NY3d 713), we conclude that it lacks merit. Defendant failed to provide clear and convincing evidence of special circumstances to warrant a downward departure (*see Correction Law § 168-n [3]*; *People v Ratcliff*, 53 AD3d 1110, *lv denied* 11 NY3d 708; *People v McDaniel*, 27 AD3d 1158, *lv denied* 7 NY3d 703).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court