

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

906

KA 08-00396

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT H. SMITH, DEFENDANT-APPELLANT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, INC., LIVINGSTON COUNTY
CONFLICT DEFENDERS, WARSAW (NEAL J. MAHONEY OF COUNSEL), FOR
DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF
COUNSEL), FOR RESPONDENT.

Appeal from an order of the Livingston County Court (Dennis S. Cohen, J.), entered November 28, 2007. 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.*). Contrary to the contention of defendant, County Court properly assessed 10 points against him under the risk factor for acceptance of responsibility. Although defendant pleaded guilty to the crime underlying the SORA determination, the court properly concluded that the statements contained in the letter that he submitted to the Board of Examiners of Sex Offenders and the statements that he made during the SORA hearing did not "reflect a genuine acceptance of responsibility as required by the risk assessment guidelines developed by the Board [of Examiners of Sex Offenders]" (*People v Noriega*, 26 AD3d 767, *lv denied* 6 NY3d 713 [internal quotation marks omitted]; see *People v Carman*, 33 AD3d 1145, 1146; *People v Mitchell*, 300 AD2d 377, 378, *lv denied* 99 NY2d 510).

Contrary to the further contention of defendant, he failed to present clear and convincing evidence of special circumstances justifying a downward departure from his presumptive risk level (see *People v Clark*, 66 AD3d 1366, *lv denied* 13 NY3d 713; *People v McDaniel*, 27 AD3d 1158, *lv denied* 7 NY3d 703).

Finally, we conclude that the court's oral findings of fact and conclusions of law "are clear, supported by the record and

sufficiently detailed to permit intelligent appellate review" (*People v Roberts*, 54 AD3d 1106, 1106-1107, lv denied 11 NY3d 713; see *People v Wood*, 60 AD3d 1350; *People v Leibach*, 39 AD3d 1093, 1094, lv denied 9 NY3d 806).

Entered: July 2, 2010

Patricia L. Morgan
Clerk of the Court