

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

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**KA 14-02104**

PRESENT: CENTRA, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASON M. MOSHMAN, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Erie County Court (Kenneth F. Case, J.), dated September 26, 2014. 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: On appeal from an order determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.), defendant contends that County Court erred in assessing 15 points against him under risk factor 11 based upon his history of drug and alcohol abuse. We reject that contention inasmuch as "[t]he statements in the case summary . . . with respect to defendant's substance abuse constitute reliable hearsay supporting the court's assessment of points under the risk factor for history of drug or alcohol abuse" (*People v St. Jean*, 101 AD3d 1684, 1684). Furthermore, based on defendant's admissions to a history of substance abuse and regular past use of marihuana, along with his "unacceptable" performance in an alcohol and substance abuse treatment program, we conclude that there is clear and convincing evidence that defendant had a history of substance abuse, and the court properly assessed the disputed 15 points (*see People v Mundo*, 98 AD3d 1292, 1293, *lv denied* 20 NY3d 855; *People v Ramos*, 41 AD3d 1250, 1250, *lv denied* 9 NY3d 809; *see also People v Merkley*, 125 AD3d 1479, 1479; *see generally* § 168-n [3]).

Entered: July 8, 2016

Frances E. Cafarell  
Clerk of the Court