

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

**902**

**KA 15-01177**

PRESENT: WHALEN, P.J., CARNI, LINDLEY, CURRAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAMIAN JOHNSON, DEFENDANT-APPELLANT.

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CATHERINE H. JOSH, ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Francis A. Affronti, J.), entered May 20, 2015. 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 modified on the law by determining that defendant is a level two risk pursuant to the Sex Offender Registration Act and as modified the order is affirmed without costs.

Memorandum: Defendant appeals from an order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). As the People correctly concede, Supreme Court erred in calculating the three-year period under risk factor 10, recency of prior felony or sex crime, from the date of sentencing rather than the date of the plea (*see People v Wood*, 60 AD3d 1350, 1350). Thus, the risk assessment score must be reduced from 115 to 105, rendering defendant a presumptive level two risk. We therefore modify the order accordingly.

Contrary to the People's contention that the court failed to rule on their request to assess 20 points under risk factor seven, relationship with the victim, the record establishes that the court denied their request.

Entered: June 30, 2017

Frances E. Cafarell  
Clerk of the Court