

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

425

KA 22-00396

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, GREENWOOD, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRYL BROWN, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (TIMOTHY S. DAVIS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Monroe County Court (Meredith A. Vacca, J.), entered February 1, 2022. 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 (Correction Law § 168 *et seq.*). Contrary to defendant's contention, County Court properly assessed 15 points under risk factor 11 for a history of drug or alcohol abuse inasmuch as "[t]he statements in the case summary and presentence report with respect to defendant's substance abuse constitute reliable hearsay supporting the court's assessment of points under th[at] risk factor" (*People v Schumacher*, 224 AD3d 1326, 1327 [4th Dept 2024] [internal quotation marks omitted]). Those statements establish that defendant has a history of marihuana and alcohol abuse. "Although defendant appears to have abstained from drug and alcohol use while incarcerated, a 'recent history of abstinence while incarcerated is not necessarily predictive of his behavior when no longer under such supervision' " (*People v Turner*, 188 AD3d 1746, 1747 [4th Dept 2020], *lv denied* 36 NY3d 910 [2021]; see *People v Cox*, 181 AD3d 1184, 1185 [4th Dept 2020], *lv denied* 35 NY3d 909 [2020]; *People v Slishevsky*, 174 AD3d 1399, 1400 [4th Dept 2019], *lv denied* 34 NY3d 908 [2020]; see generally *People v Palmer*, 20 NY3d 373, 377-378 [2013]).

Entered: July 26, 2024

Ann Dillon Flynn
Clerk of the Court