

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

676

KA 14-02142

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BETTY M. COLLETTE, DEFENDANT-APPELLANT.

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

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

Appeal from an order of the Supreme Court, Monroe County (Daniel J. Doyle, J.), entered September 23, 2014. 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 she is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*), defendant contends that Supreme Court abused its discretion in denying her request for a downward departure from the presumptive level three risk. We reject that contention. "A defendant seeking a downward departure has the initial burden of . . . identifying, as a matter of law, an appropriate mitigating factor, namely, a factor which tends to establish a lower likelihood of reoffense or danger to the community and is of a kind, or to a degree, that is otherwise not adequately taken into account by the risk assessment guidelines" (*People v Clark*, 126 AD3d 1540, 1540, *lv denied* 25 NY3d 910 [internal quotation marks omitted]; *see People v Gillotti*, 23 NY3d 841, 861), and defendant failed to make that showing (*see Clark*, 126 AD3d at 1540; *People v Johnson*, 120 AD3d 1542, 1542, *lv denied* 24 NY3d 910).

Entered: September 30, 2016

Frances E. Cafarell
Clerk of the Court