

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

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KA 19-00702

PRESENT: PERADOTTO, J.P., TROUTMAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN R. GEIL, DEFENDANT-APPELLANT.

JAMES A. NAPIER, ROCHESTER, FOR DEFENDANT-APPELLANT.

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

Appeal from an order of the Monroe County Court (Vincent M. Dinolfo, A.J.), dated July 10, 2018. 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: 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.*). We note that County Court granted the People's request for an upward departure from his presumptive classification as a level two risk based on " 'an aggravating . . . factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines' " (*People v Gillotti*, 23 NY3d 841, 853 [2014]; *see People v Dressner*, 170 AD3d 1632, 1633 [4th Dept 2019], *lv denied* 33 NY3d 907 [2019]; *People v Harrell*, 168 AD3d 890, 890 [2d Dept 2019], *lv denied* 33 NY3d 904 [2019]). Defendant's sole contention on appeal is that the court erred in determining that he was a presumptive level two risk because it should not have assessed points against him under factors 1, 7, and 12 of the risk assessment instrument. Because defendant does not challenge the upward departure, his challenge to the presumptive risk level is academic.

Entered: March 20, 2020

Mark W. Bennett
Clerk of the Court