

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

716

KA 18-00931

PRESENT: SMITH, J.P., CARNI, CURRAN, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES M. PELLIS, DEFENDANT-APPELLANT.

MICHAEL G. CIANFARANO, OSWEGO, FOR DEFENDANT-APPELLANT.

GREGORY S. OAKES, DISTRICT ATTORNEY, OSWEGO (AMY L. HALLENBECK OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Oswego County Court (Donald E. Todd, J.), dated February 22, 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.*). Contrary to defendant's contention, County Court properly considered his youthful offender adjudication for burglary in the second degree when assessing points under risk factor 9 (*see People v Francis*, 30 NY3d 737, 747-748 [2018]; *People v Gamble*, 141 AD3d 1119, 1119 [4th Dept 2016], *lv dismissed* 28 NY3d 1044 [2016]; *People v Williams*, 122 AD3d 1378, 1379 [4th Dept 2014]). Burglary in the second degree is a class C violent felony offense (*see Penal Law* § 70.02 [1] [b]), and thus based on that youthful offender adjudication the court properly assessed 30 points under risk factor 9 (*see People v Vasquez*, 89 AD3d 816, 816 [2d Dept 2011]; *People v Stacconi*, 81 AD3d 1046, 1046-1047 [3d Dept 2011]), which, when combined with the points assessed under the other relevant risk factors not at issue on this appeal, rendered defendant a presumptive level three risk.

Entered: August 20, 2020

Mark W. Bennett
Clerk of the Court