

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

273

KA 12-00926

PRESENT: SMITH, J.P., FAHEY, LINDLEY, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JIMMY DEAN RUSSELL, DEFENDANT-APPELLANT.

MATTHEW T. AUSTIN, EAST ROCHESTER, FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Orleans County Court (James P. Punch, J.), entered May 8, 2012. 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 ([SORA] Correction Law § 168 *et seq.*). Although “[a] sex offender facing risk level classification under SORA has a right to . . . effective assistance of counsel” (*People v Willingham*, 101 AD3d 979, 979), we conclude that, viewing the evidence, the law and the circumstances of this case in totality and as of the time of representation, defendant received effective assistance of counsel (*see People v Young*, 108 AD3d 1232, 1232, *lv denied* 22 NY3d 853, *rearg denied* 22 NY3d 1036; *see generally People v Baldi*, 54 NY2d 137, 147). Even assuming, arguendo, that defense counsel erred in failing to object to the admission in evidence of the document at issue, we conclude that the case summary alone is sufficient to support County Court’s determination with respect to the risk factor at issue (*see Young*, 108 AD3d at 1232; *People v Guzman*, 96 AD3d 1441, 1441-1442, *lv denied* 19 NY3d 812).

Entered: March 21, 2014

Frances E. Cafarell
Clerk of the Court