

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

1333

**KA 13-01064**

PRESENT: CENTRA, J.P., FAHEY, VALENTINO, WHALEN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS C. RICKS, DEFENDANT-APPELLANT.

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DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (NICHOLAS T. TEXIDO OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Erie County Court (Kenneth F. Case, J.), entered April 16, 2013. 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 did not abuse its discretion in refusing to grant him a downward departure from his presumptive risk level (*see People v Johnson*, 120 AD3d 1542, 1542, *lv denied* \_\_\_ NY3d \_\_\_ [Nov. 24, 2014]; *see generally People v Gillotti*, 23 NY3d 841, 861, 864). Defendant's further contention that the court erred in designating him a sexually violent offender is not preserved for our review (*see* § 168-a [7] [b]; *see generally People v Young*, 108 AD3d 1232, 1232, *lv denied* 22 NY3d 853, *rearg denied* 22 NY3d 1036) and, in any event, we conclude that it lacks merit (*see People v Ayala*, 72 AD3d 1577, 1578, *lv denied* 15 NY3d 816).

Entered: January 2, 2015

Frances E. Cafarell  
Clerk of the Court