

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

643

KA 15-00470

PRESENT: PERADOTTO, J.P., CARNI, CURRAN, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICKEY GAMBLE, 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 Monroe County Court (Victoria M. Argento, J.), entered February 17, 2015. The order affirmed an order of City Court determining 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 of County Court that affirmed an order of City Court determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). According to defendant, City Court erred in failing to recognize that it had the discretion "not to assess" points under two risk factors based on a youthful offender adjudication and erred in instead treating defendant's request "not to assess points" as a request for a downward departure from the presumptive risk level. We reject that contention inasmuch as the court lacked discretion to decline to consider evidence of the youthful offender adjudication in determining defendant's presumptive risk level. "[I]t is well settled that youthful offender adjudications are to be treated as crimes for purposes of assessing the defendant's likelihood of re-offending and danger to public safety" (*People v Williams*, 122 AD3d 1378, 1379 [internal quotation marks omitted]; see Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 6, 13; see also *People v Francis*, 137 AD3d 91, 99-100).

Entered: July 1, 2016

Frances E. Cafarell
Clerk of the Court