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

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KA 15-01227

PRESENT: SMITH, J.P., CARNI, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

ISRAEL RODRIGUEZ, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), entered April 22, 2015. The order determined that defendant is a level two 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 two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq*.). Contrary to defendant's contention, Supreme Court did not err in assigning him points under risk factors 3 (number of victims) and 7 (stranger relationship with victim) inasmuch as defendant is a child pornography offender (*see People v Gillotti*, 23 NY3d 841, 854-855; *People v Graziano*, 140 AD3d 1541, 1542, *lv denied* 28 NY3d 909; *People v Wooten*, 136 AD3d 1305, 1306). Defendant did not dispute the proof that he possessed pornographic images depicting three or more children, and he did not dispute that the victimized children portrayed in those images were strangers to him (*see Graziano*, 140 AD3d at 1542).

To the extent that defendant contends that he is entitled to a downward departure from his presumptive risk level, we note that he failed to preserve that contention for our review (*see People v Gilbert*, 78 AD3d 1584, 1585-1586, *lv denied* 16 NY3d 704), and we decline to exercise our own discretion to grant him that relief (*cf. People v Santiago*, 20 AD3d 885, 885-886).

Entered: February 10, 2017

Frances E. Cafarell
Clerk of the Court