

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

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**KA 18-00283**

PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL COIT, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (DEBORAH K. JESSEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Christopher J. Burns, J.), entered August 9, 2017. 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: On appeal from an order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*), defendant contends that Supreme Court abused its discretion in denying his request for a downward departure from his presumptive risk level. We reject that contention and conclude that defendant "failed to establish by a preponderance of the evidence the existence of mitigating factors not adequately taken into account by the guidelines" (*People v Lewis*, 156 AD3d 1431, 1432 [4th Dept 2017], *lv denied* 31 NY3d 904 [2018]; see *People v Gillotti*, 23 NY3d 841, 861 [2014]). We have reviewed defendant's remaining contention and conclude that it does not warrant modification or reversal of the order.

Entered: January 31, 2020

Mark W. Bennett  
Clerk of the Court