

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

452

**KA 19-01732**

PRESENT: PERADOTTO, J.P., LINDLEY, NEMOYER, TROUTMAN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HECTOR SERRANO, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Monroe County Court (Stephen T. Miller, A.J.), entered June 18, 2019. 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, County Court did not err in denying his request for a downward departure from his presumptive risk level. Even assuming, arguendo, that defendant met his burden of establishing the existence of an appropriate mitigating factor by a preponderance of the evidence, we conclude that the court providently exercised its discretion in denying defendant's request for a downward departure (*see People v Wooten*, 136 AD3d 1305, 1306 [4th Dept 2016]; *see also People v Bernecky*, 161 AD3d 1540, 1541 [4th Dept 2018], *lv denied* 32 NY3d 901 [2018]). We reject defendant's related contention that the court erred in denying his request for a downward departure because the assessment of points under risk factors 3 and 7 resulted in an "inflated" score on his risk assessment instrument (*see People v Tirado*, 165 AD3d 991, 992 [2d Dept 2018], *lv denied* 32 NY3d 914 [2019]; *People v Goldman*, 150 AD3d 905, 907 [2d Dept 2017]).

Entered: August 20, 2020

Mark W. Bennett  
Clerk of the Court