

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

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KA 19-00671

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL LEACH, DEFENDANT-APPELLANT.

KELIANN M. ARGY, ORCHARD PARK, FOR DEFENDANT-APPELLANT.

Appeal from an order of the Wyoming County Court (Michael M. Mohun, J.), dated November 27, 2018. The order denied the petition of defendant to reduce his risk level 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 denying his petition pursuant to Correction Law § 168-o (2) seeking to modify the prior determination that he is a level three risk pursuant to the Sex Offender Registration Act (§ 168 *et seq.*). We conclude that County Court properly denied the petition inasmuch as defendant failed to meet his "burden of proving the facts supporting the requested modification by clear and convincing evidence" (§ 168-o [2]; see *People v Hegazy*, 170 AD3d 899, 900 [2d Dept 2019]). Defendant failed to preserve for our review his further contention that he was deprived of his right to due process by the alleged inadequacy of the updated recommendation prepared by Board of Examiners of Sex Offenders (§ 168-o [4]; see generally *People v Willis*, 130 AD3d 1470, 1471-1472 [4th Dept 2015]; *People v Akinpelu*, 126 AD3d 1451, 1452 [4th Dept 2015], *lv denied* 25 NY3d 912 [2015]) and, in any event, we conclude that defendant's contention lacks merit.

Entered: March 19, 2021

Mark W. Bennett
Clerk of the Court