

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

468

KA 23-01116

PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEVEN J. FELDER, DEFENDANT-APPELLANT.

THOMAS L. PELYCH, HORNELL, FOR DEFENDANT-APPELLANT.

BRITTANY GROME ANTONACCI, DISTRICT ATTORNEY, AUBURN (HEATHER M. DESTEFANO OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Cayuga County Court (Thomas G. Leone, J.), entered April 17, 2023. 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: Defendant appeals from an order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*) after a conviction upon his guilty plea of attempted sexual abuse in the first degree (Penal Law §§ 110.00, 130.65 [1]).

Defendant contends that he should not have been assessed 10 points under risk factor 1, for the use of forcible compulsion. We reject that contention. The People established by clear and convincing evidence, through their submission of, *inter alia*, the plea minutes, the presentence report and the grand jury testimony of the victim, that defendant used forcible compulsion during the incident underlying his conviction (*see People v Dabney*, 221 AD3d 624, 625 [2d Dept 2023], *lv denied* 41 NY3d 904 [2024]).

Contrary to defendant's further contention, we conclude that his counsel was not ineffective in purportedly failing to articulate adequate reasons in support of his request for a downward departure because such a request had " 'little or no chance of success' " (*People v Caban*, 5 NY3d 143, 152 [2005]; *see People v Clement*, 209 AD3d 1300, 1301 [4th Dept 2022]).

Entered: July 26, 2024

Ann Dillon Flynn
Clerk of the Court