

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

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KA 17-00295

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NORMAN R. QUIGLEY, DEFENDANT-APPELLANT.

JAMES S. KERNAN, PUBLIC DEFENDER, LYONS (ROBERT TUCKER OF COUNSEL),
FOR DEFENDANT-APPELLANT.

MICHAEL D. CALARCO, DISTRICT ATTORNEY, LYONS (BRUCE A. ROSEKRANS OF
COUNSEL), FOR RESPONDENT.

Appeal from an order of the Wayne County Court (John B. Nesbitt, J.), dated November 28, 2016. 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 County Court abused its discretion in denying his application for a downward departure from his presumptive risk level. Even assuming, *arguendo*, that defendant preserved the contention raised on appeal for our review by seeking a downward departure on different grounds before the trial court, we conclude that it lacks merit. Here, defendant "failed to establish his entitlement to a downward departure from his presumptive risk level inasmuch as he failed to establish the existence of a mitigating factor by the requisite preponderance of the evidence" (*People v Nilsen*, 148 AD3d 1688, 1689 [4th Dept 2017], *lv denied* 29 NY3d 912 [2017]; see *People v Puff*, 151 AD3d 1965, 1966 [4th Dept 2017], *lv denied* 30 NY3d 904 [2017]).

Entered: July 6, 2018

Mark W. Bennett
Clerk of the Court