

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

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KA 20-00289

PRESENT: WHALEN, P.J., SMITH, CENTRA, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NICHOLAS B. MAHAR, DEFENDANT-APPELLANT.

ANDREW D. CORREIA, PUBLIC DEFENDER, ROCHESTER (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

Appeal from an order of the Wayne County Court (John B. Nesbitt, J.), entered August 15, 2019. The order determined that defendant is a level three risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Wayne County Court for further proceedings in accordance with the following 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 of sexual abuse in the first degree (Penal Law § 130.65 [3]). We agree with defendant to the extent that he contends that County Court made only general and conclusory findings of fact and conclusions of law. We are thus unable to conduct a meaningful review of the court's risk level assessment, particularly with respect to the court's assessment of points for risk factors 3, 4, and 12 (*see People v Leopold*, 13 NY3d 923, 924 [2010]; *People v Dean*, 169 AD3d 1414, 1415 [4th Dept 2019]; *People v Cameron*, 87 AD3d 1366, 1366-1367 [4th Dept 2011]). We therefore hold the case, reserve decision, and remit the matter to County Court to prepare statutorily compliant findings of fact and conclusions of law (*see* Correction Law §§ 168-d [3]; 168-n [3]).

Entered: February 5, 2021

Mark W. Bennett
Clerk of the Court