SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

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KA 22-01643

PRESENT: SMITH, J.P., LINDLEY, MONTOUR, GREENWOOD, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

WILLIE SINGLETON, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (LEAH N. FARWELL OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER EAGGLESTON OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Ontario County Court (Frederick G. Reed, A.J.), entered July 20, 2022. The order denied the petition of defendant for a modification of his risk level assessment 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 (SORA) (§ 168 *et seq.*). We affirm.

Defendant contends that he was denied due process because, prior to County Court's initial SORA risk level determination upon a redetermination hearing conducted in 2006 under the stipulation of settlement in *Doe v Pataki* (3 F Supp 2d 456 [SD NY 1998]), the People allegedly failed to prepare and provide a new risk assessment instrument (RAI). We conclude that defendant's contention is not properly before us inasmuch as " 'Correction Law § 168-o . . . does not provide a vehicle for reviewing whether defendant's circumstances were properly analyzed in the first instance to arrive at his risk level' " (*People v Singleton*, 181 AD3d 1232, 1232 [4th Dept 2020], *lv denied* 35 NY3d 914 [2020], quoting *People v David W.*, 95 NY2d 130, 140 [2000]; *see People v Anthony*, 171 AD3d 1412, 1413 [3d Dept 2019]). Defendant's contention "should have been raised on a direct appeal of th[e] order [following the redetermination hearing] . . . , rather than an application pursuant to Correction Law § 168-o (2)," yet defendant did not appeal from the order following the redetermination hearing (*Anthony*, 171 AD3d at 1413).

To the extent that defendant further contends that he was denied

due process because an updated RAI was not prepared and provided prior to the hearing on his present petition for modification pursuant to Correction Law § 168-o (2), we conclude that his contention is not preserved for our review because he did not raise that contention before the SORA court (*see generally People v Poleun*, 26 NY3d 973, 974-975 [2015]; *People v Charache*, 9 NY3d 829, 830 [2007]; *People v Neuer*, 86 AD3d 926, 926 [4th Dept 2011], *lv denied* 17 NY3d 716 [2011]). In any event, that contention lacks merit. The statute specifies in pertinent part that, upon receipt of a petition pursuant to section 168-o, "the court shall forward a copy of the petition to the [B]oard [of Examiners of Sex Offenders (Board)] and request an updated recommendation pertaining to the sex offender" (§ 168-o [4]). The record establishes that the court "followed th[at] procedure and received an 'updated recommendation' from the Board, in the form of a letter" (*People v Williams*, 128 AD3d 788, 789 [2d Dept 2015], *lv denied* 26 NY3d 902 [2015]). Conversely, "[t]he RAI, an 'objective assessment instrument' created by the Board to assess an offender's 'presumptive risk level' (Sex Offender Registration Act: Risk Assessment Guidelines and Commentary at 3 [2006])[,] was designed to assist the courts in reaching an initial SORA determination" (*id*. at 789-790). We thus conclude that a new RAI was not required in the context of defendant's petition for modification pursuant to Correction Law § 168-o (2) (*see id*. at 790).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court