

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

428

**KA 20-01317**

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, GREENWOOD, AND KEANE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LEONARD JACKSON, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Monroe County Court (Michael L. Dollinger, J.), dated September 23, 2020. 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 request for a downward departure from his presumptive risk level. We affirm.

Even assuming, *arguendo*, that defendant satisfied his burden with respect to "the first two steps of the three-step analysis required in evaluating a request for a downward departure" (*People v Cornwell*, 213 AD3d 1239, 1240 [4th Dept 2023], *lv denied* 39 NY3d 916 [2023]), we conclude on this record, after applying the third step of weighing the aggravating and mitigating factors, that the totality of the circumstances demonstrates that "defendant's presumptive risk level does not represent an over-assessment of his dangerousness and risk of sexual recidivism" (*People v Burgess*, 191 AD3d 1256, 1257 [4th Dept 2021]).

Entered: July 26, 2024

Ann Dillon Flynn  
Clerk of the Court