

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

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KA 07-01890

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EDWARD W. HARDY, JR., DEFENDANT-APPELLANT.

E. ROBERT FUSSELL, P.C., LEROY (E. ROBERT FUSSELL OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Genesee County Court (Robert C. Noonan, J.), entered August 9, 2007. 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 designating him a level three risk pursuant to the Sex Offender Registration Act ([SORA] Correction Law § 168 *et seq.*). Defendant contends that County Court's assessment of 40 additional points at the SORA hearing is not supported by the requisite clear and convincing evidence and thus that he was not properly classified as a level three risk (see § 168-n [3]). We reject that contention. The record establishes that the court properly considered the case summary, which constitutes reliable hearsay, in determining defendant's risk level (see *People v Vacanti*, 26 AD3d 732, *lv denied* 6 NY3d 714). We have considered defendant's remaining contentions and conclude that they are without merit.

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court