

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

1381

KA 08-01733

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALFRED K. MCGRIGG, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Erie County Court (Sheila A. DiTullio, J.), entered September 4, 2008. The order determined that defendant is a level two 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 determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.) following a redetermination hearing conducted upon defendant's request, in accordance with *Doe v Pataki* (481 F3d 69). We reject the contention of defendant that, because he had been released from imprisonment for 10 years at the time of the redetermination hearing, County Court erred in assessing 15 points against him for being released from prison without supervision (see *People v Ferrara*, 38 AD3d 1302, lv denied 8 NY3d 815; see generally Sex Offender Registration Act: Risk Assessment Guidelines and Commentary, at 17 [2006]). Contrary to defendant's further contention, "the court did not abuse its discretion in determining that the fact that defendant had not been charged with a sex offense since his release from imprisonment on the underlying offense did not warrant a downward departure" (*People v Perkins*, 32 AD3d 1241, 1241, lv denied 7 NY3d 718).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court