

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

426

KA 09-00531

PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PATRICK DISTAFFEN, DEFENDANT-APPELLANT.

STEVEN D. SESSLER, GENESEO, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Ontario County Court (Frederick G. Reed, J.), entered January 20, 2009. 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 reversed on the law without costs and the matter is remitted to Ontario 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 ([SORA] Correction Law § 168 *et seq.*). The People candidly concede that County Court violated the due process rights of defendant when it held the SORA hearing in his absence without verifying that he had received the letter notifying him of the date of the hearing and his right to be present (*see People v Gonzalez*, 69 AD3d 819; *cf. People v Ensell*, 49 AD3d 1301, *lv denied* 10 NY3d 715). We therefore reverse the order and remit the matter to County Court for a new hearing and risk level determination in compliance with Correction Law § 168-n (3).

Entered: March 26, 2010

Patricia L. Morgan
Clerk of the Court