

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

1450

KA 09-00745

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ENRICO ALVARADO, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an amended order of the Supreme Court, Monroe County (Frank P. Geraci, Jr., A.J.), entered March 11, 2009. The amended order determined that defendant is a level three risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that the amended order so appealed from is unanimously modified on the law by replacing the phrase "sexual predator" at page four of the order with the phrase "predicate sex offender" and as modified the amended order is affirmed without costs.

Memorandum: Defendant appeals from an amended order determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). Contrary to defendant's contention, Supreme Court properly considered the case summary and the presentence report, which constitute reliable hearsay, in determining that defendant had a prior out-of-state conviction (*see People v Mingo*, 12 NY3d 563, 573; *People v Lewis*, 45 AD3d 1381, *lv denied* 10 NY3d 703). Thus, the court properly assessed 30 points for a prior out-of-state felony conviction for a sex offense (*see People v Johnson*, 46 AD3d 1032), and defendant's classification as a level three risk is supported by the requisite clear and convincing evidence (*see* § 168-n [3]). As the People correctly concede, however, the court improperly classified defendant as a sexual predator in its amended order rather than as a predicate sex offender, and we therefore modify the amended order accordingly.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court