

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

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**KA 08-02185**

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASON FLEMING, DEFENDANT-APPELLANT.

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MICHAEL CONROY, AUBURN, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (HEATHER M. DESTEFANO OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Cayuga County Court (Thomas G. Leone, J.), entered June 20, 2008. The order determined that defendant is a level one risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that said appeal is unanimously dismissed in part and the order otherwise is affirmed without costs.

Memorandum: Defendant appeals from an order determining that he is a level one risk pursuant to the Sex Offender Registration Act (see Correction Law § 168 et seq.). Defendant does not challenge his risk level designation, but instead contends only that he should not have been required to register as a sex offender because the crimes of which he was convicted under the Uniform Court of Military Justice have no equivalent registerable offenses in New York. "A challenge to the . . . initial determination [of the Board of Examiners of Sex Offenders] that a defendant is a registerable sex offender constitutes a challenge to a determination of an administrative agency and is not properly raised in the subsequent court proceeding involving the separate and distinct risk level determination," and thus the appeal must be dismissed to the extent that defendant raises that challenge (*People v Carabello*, 309 AD2d 1227, 1228; see generally *People v Reitano*, 68 AD3d 954, lv denied 14 NY3d 708; *People v Teagle*, 64 AD3d 549; *People v Rendace*, 58 AD3d 821; *People v Pride*, 37 AD3d 957, lv denied 8 NY3d 812). We affirm the order insofar as it determines that defendant is a risk level one.

Entered: April 1, 2011

Patricia L. Morgan  
Clerk of the Court