

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

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KA 10-01433

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEVIN NATER-VAZQUEZ, 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 order of the Monroe County Court (Frank P. Geraci, Jr., J.), entered June 9, 2010. 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 determining that he is a level three risk pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.). Defendant contends that County Court erred in agreeing with the recommendation of the Board of Examiners of Sex Offenders that an upward departure from the presumptive risk level was warranted inasmuch as the court relied upon factors already taken into account by the risk assessment instrument. That contention is raised for the first time on appeal and thus is not preserved for our review (see *People v Staples*, 37 AD3d 1099, lv denied 8 NY3d 813). In any event, defendant's contention lacks merit.

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court