

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

997

KA 11-00629

PRESENT: SCUDDER, P.J., SMITH, CENTRA, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESUS MUNDO, DEFENDANT-APPELLANT.

SETH M. AZRIA, SYRACUSE, FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Onondaga County Court (Joseph E. Fahey, J.), entered February 7, 2011. 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 under the Sex Offender Registration Act ([SORA] Correction Law § 168 *et seq.*). We reject defendant's contention that County Court's assessment of 15 points for a history of drug or alcohol abuse, which was based upon the recommendation in the risk assessment instrument prepared by the Board of Examiners of Sex Offenders, is not supported by the requisite clear and convincing evidence (*see generally* § 168-n [3]). Although defendant testified at the SORA hearing that he did not have a history of drug or alcohol abuse, the court was entitled to reject that testimony inasmuch as it was contradicted by defendant's statements regarding his marihuana and alcohol use that were set forth in the presentence report (*see People v Longtin*, 54 AD3d 1110, 1111, *lv denied* 11 NY3d 714). Furthermore, the record establishes that defendant was required to attend drug and alcohol treatment while incarcerated, thus further supporting the court's assessment of points for a history of drug or alcohol abuse.

Entered: September 28, 2012

Frances E. Cafarell
Clerk of the Court