

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

831

**KA 13-01178**

PRESENT: SMITH, J.P., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT D. SCOTT, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ALAN WILLIAMS OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Genesee County Court (Robert C. Noonan, J.), dated May 28, 2013. 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 ([SORA] Correction Law § 168 *et seq.*). Contrary to defendant's contention, County Court properly agreed with the recommendation of the Board of Examiners of Sex Offenders that an upward departure from the presumptive risk level was warranted based upon aggravating factors not taken into account by the risk assessment guidelines, i.e., those relating to his risk of re-offense. Contrary to defendant's contention, the court properly concluded that the guidelines did not adequately take into account his lack of insight into the inappropriateness of his conduct (*see People v Cruz*, 111 AD3d 685, 685-686, *lv denied* 22 NY3d 860), and that defendant's California felony conviction, while not a "sex offense" under SORA (*see* § 168-a [2] [d] [i], [ii]), nevertheless had a sexual component (*see People v Faver*, 113 AD3d 662, 663, *lv denied* 22 NY3d 865; *People v Galindo*, 107 AD3d 603, 604). In addition, the evidence supports the court's conclusion that those factors are causally related to defendant's risk of re-offense (*see People v Abraham*, 39 AD3d 1208, 1209). Finally, we conclude that defendant received effective assistance of counsel at the SORA hearing (*see People v Russell*, 115 AD3d 1236, 1236).

Entered: July 3, 2014

Frances E. Cafarell  
Clerk of the Court