

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

1203

KA 13-00886

PRESENT: SMITH, J.P., CENTRA, FAHEY, LINDLEY, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

AARON VOYMAS, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (ROBERT TUCKER OF COUNSEL),
FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from an order of the Ontario County Court (William F. Kocher, J.), dated January 25, 2013. 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 pursuant to the Sex Offender Registration Act (Correction Law § 168 et seq.). Although the Board of Examiners of Sex Offenders (Board) recommended a downward departure from the presumptive classification of defendant as a level two risk, County Court "was not bound by the Board's recommendation and, in the proper exercise of its discretion, the court determined defendant's risk level based upon the record before it" (*People v Woodard*, 63 AD3d 1655, 1656, lv denied 13 NY3d 706). The record establishes that defendant failed to allege mitigating circumstances that are, as a matter of law, of a kind or to a degree not adequately taken into account by the Risk Assessment Guidelines and Commentary and, to the extent defendant did allege such mitigating circumstances, he failed to prove their existence by a preponderance of the evidence (see *People v Gillotti*, 23 NY3d 841, 861).

Entered: November 14, 2014

Frances E. Cafarell
Clerk of the Court