

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

1027

KA 12-00606

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EUGENE RIVERA, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Monroe County Court (Frank P. Geraci, Jr., J.), entered February 21, 2012. 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: On appeal 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's determination of his risk level is not supported by the requisite clear and convincing evidence (*see* § 168-n [3]). We reject that contention. " 'The statements in the case summary and presentence report with respect to [the number of victims and the age of the victims] constitute reliable hearsay supporting the court's assessment of points' " under those risk factors (*People v St. Jean*, 101 AD3d 1684, 1684; *see People v Adams*, 101 AD3d 1792, 1792-1793, *lv denied* 20 NY3d 860; *People v Vaughn*, 26 AD3d 776, 776-777). Defendant admitted that he had sexual contact with the victims in question, and there was reliable hearsay to establish that at least one of the victims was 10 years of age or younger at the time of the incident.

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court