

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 89
The People &c.,
Respondent,
v.
Sergio Del Rosario,
Appellant.

Debra A. Cassidy, for appellant.
Christine DiSalvo, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed, without costs. Under the circumstances presented here, we reject the People's argument that defendant's appeal is rendered moot by his deportation (*see People v Perez*, 33 NY3d 1008 [2020]). On the

merits, we conclude that it was not an abuse of discretion for the Appellate Division to sustain the upward departure based on the People's proof that defendant raped the victim in order to take revenge upon someone other than the victim—a risk factor not adequately captured by the Guidelines.

Order affirmed, without costs, in a memorandum. Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur. Chief Judge DiFiore took no part.

Decided December 22, 2020