

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 9, 2012

511372

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

WAYNE L. SMITH,

Appellant.

Calendar Date: January 9, 2012

Before: Rose, J.P., Malone Jr., Stein, McCarthy and
Egan Jr., JJ.

Jay L. Wilber, Public Defender, Binghamton (Regina Cahill
of counsel), for appellant.

Gerald F. Mollen, District Attorney, Binghamton (Joann Rose
Parry of counsel), for respondent.

Stein, J.

Appeal from an order of the County Court of Broome County
(Smith, J.), entered November 15, 2010, which classified
defendant as a risk level III sex offender pursuant to the Sex
Offender Registration Act.

Defendant pleaded guilty to rape in the first degree and
criminal sexual act in the first degree and was sentenced to five
years in prison followed by five years of postrelease
supervision. The Board of Examiners of Sex Offenders recommended
that defendant be classified as a risk level III sex offender
based upon an override factor that he had inflicted serious
physical injury upon his victim. Defendant declined a hearing

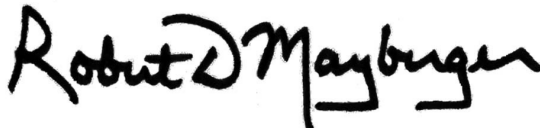
and County Court adjudicated defendant to be a risk level III sex offender as recommended by the Board. Defendant now appeals.

Defendant contends that his waiver of a hearing and consent to being adjudicated a risk level III sex offender was not knowing, voluntary and intelligent. Assuming that this argument is properly raised for the first time on appeal, we find that defendant's waiver and consent were adequate (see People v Costas, 46 AD3d 475, 476 [2007], lv denied 10 NY3d 716 [2008]; People v Gliatta, 27 AD3d 441, 441 [2006]; see also People v Kyle, 64 AD3d 1177, 1178 [2009], lv denied 13 NY3d 709 [2009]). The record reveals that County Court advised defendant of the seriousness of his decision, that he was entitled to a hearing and that he would be granted an adjournment to prepare for the hearing. Defendant stated that he understood County Court's admonitions, that he had sufficient time to discuss the matter with his attorney and that he did not wish to contest the risk level III recommendation of the Board (see People v Kinlock, 66 AD3d 980, 981 [2009]).

Rose, J.P., Malone Jr., McCarthy and Egan Jr., JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R".

Robert D. Mayberger
Clerk of the Court