

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

Decided and Entered: April 19, 2012

511986

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

DANIEL G. SMITH,

Appellant.

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Calendar Date: February 21, 2012

Before: Mercure, J.P., Rose, Malone Jr., Stein and Garry, JJ.

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Kelly L. Egan, Albany, for appellant, and appellant pro se.

James A. Murphy III, District Attorney, Ballston Spa  
(Nicholas E. Tishler of counsel), for respondent.

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Appeal from an order of the County Court of Saratoga County  
(Scarano, J.), rendered January 31, 2011, which classified  
defendant as a risk level I sex offender pursuant to the Sex  
Offender Registration Act.

In 2010, defendant was convicted in federal court of  
possession of child pornography and was sentenced to 10 years of  
federal probation. As the result of this conviction, he was  
required to register as a sex offender under the Sex Offender  
Registration Act (see Correction Law art 6-C). A risk assessment  
hearing was subsequently conducted and, at the conclusion of the  
hearing, County Court classified defendant as a risk level I sex  
offender. Defendant appeals.

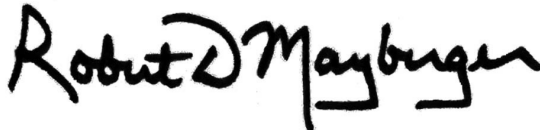
Appellate counsel seeks to be relieved of her assignment of  
representing defendant on the ground that there are no

nonfrivolous issues to be raised on appeal. Based upon our review of the record, counsel's brief and defendant's pro se submission, we agree. Defendant received the minimum risk level classification and no further downward modification is possible. Therefore, the order is affirmed and counsel's request for leave to withdraw is granted (see People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]; see generally People v Stokes, 95 NY2d 633 [2001]).

Mercure, J.P., Rose, Malone Jr., Stein and Garry, JJ.,  
concur.

ORDERED that the order is affirmed, and application to be relieved of assignment granted.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court