

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

Decided and Entered: June 27, 2024

CV-22-2286

THE PEOPLE OF STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT HARRIS,

Appellant.

Calendar Date: May 29, 2024

Before: Aarons, J.P., Pritzker, Lynch, Ceresia and Mackey, JJ.

Angela Kelley, East Greenbush, for appellant.

Robert M. Carney, District Attorney, Schenectady (*Peter H. Willis* of counsel), for respondent.

Mackey, J.

Appeal from an order of the County Court of Schenectady County (Matthew J. Sypniewski, J.), entered September 18, 2018, which classified defendant as a risk level three sex offender pursuant to the Sex Offender Registration Act.

In 2012, defendant pleaded guilty to sexual abuse in the first degree stemming from his sexual abuse of a six-year-old relative, and was sentenced to 7½ years in prison followed by 20 years of postrelease supervision. In anticipation of his release, the Board of Examiners of Sex Offenders prepared a risk assessment instrument and recommended that he be classified as a risk level three sex offender pursuant to the Sex Offender Registration Act (*see* Correction Law art 6-c [hereinafter SORA]), with a sexually violent

offender designation, based upon the override factor that he had a prior felony conviction for a sex offense, namely, attempted sodomy in the first degree (*see* Penal Law former § 130.50 [3]; Correction Law § 168-a [3] [a]). At the hearing, County Court advised defendant, who was represented by counsel, that he had a right to a hearing to challenge the Board's recommendation and the presumptive override, and to contest the evidence and present a defense. Defendant then waived a hearing and, on defendant's consent, County Court classified him as a risk level three sex offender and designated him a sexually violent offender, and defendant appeals.

It is well established that SORA risk level classification proceedings are civil in nature and not part of the criminal action (*see People v Watts*, ___ NY3d ___, ___, 2024 NY Slip Op 00926, *2-3 [2024]; *People v Perez*, 35 NY3d 85, 94 [2020]; *People v Stevens*, 91 NY2d 270, 277 [1998]) and, as such, SORA risk determinations are "subject to a civil appeal process" (*People v Buyund*, 37 NY3d 532, 540 [2021]). By statute, appeals as of right to the Appellate Division from SORA risk classification orders are pursuant to CPLR articles 55 and 57 (*see* Correction Law § 168-n [3]). However, a party who consents to an order, including a SORA order, in a civil proceeding is not aggrieved by the order within the meaning of CPLR 5511 and, accordingly, defendant's appeal must be dismissed (*see People v White*, 39 AD3d 979, 979 [3d Dept 2007]; *see also People v Jennings*, 146 AD3d 823, 824 [2d Dept 2017]; *People v Johnson*, 142 AD3d 1061, 1061 [2d Dept 2016], *lv dismissed* 28 NY3d 1104 [2016]; *Matter of O'Sullivan v Schebilski*, 138 AD3d 1170, 1172 [3d Dept 2016]; *People v Brown*, 125 AD3d 1380, 1380-1381 [4th Dept 2015]; *People v Welch*, 30 AD3d 392, 393 [2d Dept 2006]; *cf. People v Motta*, 215 AD3d 771, 772 [2d Dept 2023]). Defendant's argument that his consent was not voluntary due, in part, to the ineffective assistance of counsel may be addressed to County Court in a motion to vacate the order, "at which time he can present evidence in support of his allegations, proof of which is otherwise absent from this record" (*People v Johnson*, 142 AD3d at 1061; *see Matter of O'Sullivan v Schebilski*, 138 AD3d at 1172; *Matter of Commissioner of Social Servs. v Karcher*, 129 AD3d 1351, 1351 [3d Dept 2015]; *People v Brown*, 125 AD3d at 1381; *see also People v Eiss*, 158 AD3d 905, 907 [3d Dept 2018], *lv denied* 31 NY3d 907 [2018]).

Aarons, J.P., Pritzker, Lynch and Ceresia, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court