This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 76 SSM 50 The People &c., Respondent, V. Dwayne Middleton, Appellant.

> Submitted by Steven J. Miraglia, for appellant. Submitted by Maria Park, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed without costs.

Defendant's constitutional arguments are unpreserved. The record supports the determination of the courts below that defendant is a level 3 sex offender.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, without costs, in a memorandum. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

Decided February 17, 2009