

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - June 20, 2006

ANITA R. FLORIO, J.P.  
GLORIA GOLDSTEIN  
WILLIAM F. MASTRO  
STEVEN W. FISHER, JJ.

2005-02113

DECISION & ORDER

People of State of New York, respondent,  
v Duane Middleton, appellant.

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Steven Banks, New York, N.Y. (Paul Wiener of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anthea H. Bruffee, and Maria Park of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Kings County (Marrero, J.), dated March 2, 2005, which, after a hearing pursuant to Correction Law article 6-C, designated him a level two sex offender.

ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Kings County, for a new hearing and determination in accordance herewith.

It appears from the transcript that at the defendant's Sex Offender Registration Act hearing, possibly three different risk assessment instruments were proffered to the Supreme Court for its consideration. One was a typewritten instrument prepared by the Board of Examiners of Sex Offenders. The other two were handwritten instruments, apparently prepared by the Kings County District Attorney's Office.

There is no statement in the hearing transcript indicating which of the instruments the Supreme Court relied on in making its determination. The transcript also is not clear as to which factors the Supreme Court considered in reaching its ultimate determination as to the risk level to be assigned to the defendant. Under these circumstances, we remit the matter to the Supreme Court,

October 17, 2006

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Kings County, for a new hearing at which the court shall clearly indicate on the record which risk assessment instrument it is relying on and which factors it considered in making its determination.

FLORIO, J.P., GOLDSTEIN, MASTRO and FISHER, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court