

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

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_____AD3d_____

Submitted - June 10, 2008

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2005-11599

DECISION & ORDER

The People, etc., respondent,
v Sidiki Weay, appellant.

(Ind. No. 2940/98)

Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Suzanne H. Sullivan of counsel), for respondent.

Appeal by the defendant from an order of the Supreme Court, Queens County (Eng, J.), dated October 28, 2005, which denied his postconviction motion pursuant to CPL 440.30(1-a) for DNA testing.

ORDERED that the order is affirmed.

The Supreme Court properly denied the defendant's motion pursuant to CPL 440.30(1-a) for DNA testing since the defendant failed to show that there was a reasonable probability that the verdict would have been more favorable to him had the DNA test results been admitted into evidence at trial (*see* CPL 440.30[1-a]; *People v Brown*, 36 AD3d 961; *People v Figueroa*, 36 AD3d 458; *People v Shenouda*, 307 AD2d 938; *People v Pugh*, 288 AD2d 634; *People v De Oliveria*, 223 AD2d 766).

RITTER, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 2, 2008

PEOPLE v WEAY, SIDIKI