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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 87 SSM 43
The People &c.,
Respondent,
v.
Dwight Moss,
Appellant.

Submitted by James Eckert, for appellant.
Submitted by Nancy Gilligan, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed,
without costs, and the matter remitted to Supreme Court for
further proceedings in accordance with this memorandum.

Both Supreme Court and the Appellate Division failed to articulate a proper legal basis for adjudicating the defendant a risk level three sex offender under the Sex Offender Registration Act (Correction Law § 168 et seq.). As conceded by the People, no basis in law exists for Supreme Court's or the Appellate Division's conclusion that an automatic override increased defendant's presumptive risk level two designation to risk level three (see Sex Offender Registration Act Risk Assessment Guidelines and Commentary at 3-4 [2006]). Both of the courts below having erred in concluding defendant is a presumptive risk level three offender, we remit to Supreme Court for further proceedings.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, without costs, and case remitted to Supreme Court, Monroe County, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided February 13, 2014