

---

---

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

---

No. 68 SSM 42  
The People &c.,  
Respondent,  
v.  
Darren Staton,  
Appellant.

Submitted by Bryan D. Kreykes, for appellant.  
Submitted by Merri Turk Lasky, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.  
Defendant Darren Staton appeals from an order of the  
Appellate Division, which affirmed Supreme Court's judgment and  
brings up for review denial of defendant's motion to suppress

identification testimony and his subsequent conviction.

Defendant argues that the pre-trial photo array that led to his arrest was unduly suggestive because he appeared older than the fillers and was the only participant with salt and pepper hair. The Appellate Division's finding that the array was not unduly suggestive is supported by the record, and therefore beyond our further review (People v Holley, 26 NY3d 514, 524 [2015]).

Consequently, defendant's contention that the photo array tainted the lineup after his arrest, to the extent this argument is preserved, is without merit. Additionally, defendant's argument that he was denied right to counsel is belied by the record (People v Caban, 5 NY3d 143, 152 [2005]), and he has failed to demonstrate the absence of any strategic or legitimate explanation for counsel's silence and inaction at sentencing (People v Wright, 25 NY3d 769, 779 [2015]).

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein, Fahey, Garcia and Wilson concur.

Decided February 16, 2017