

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-01491

PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND GORSKI, JJ.

IN THE MATTER OF THE STATE OF NEW YORK,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

LERRYL SMITH, RESPONDENT-APPELLANT.

EMMETT J. CREAHAN, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, BUFFALO
(KEVIN S. DOYLE OF COUNSEL), FOR RESPONDENT-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MICHAEL CONNOLLY OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (John L. Michalski, A.J.), entered April 30, 2010 in a proceeding pursuant to Mental Hygiene Law article 10. The order committed respondent to a secure treatment facility.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent appeals from an order determining that he is a dangerous sex offender requiring confinement pursuant to Mental Hygiene Law article 10 and committing him to a secure treatment facility. We reject respondent's contention that petitioner failed to establish by clear and convincing evidence at the dispositional hearing that "respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" (§ 10.07 [f]). We are "[m]indful that Supreme Court was in the best position to evaluate the weight and credibility of the conflicting psychiatric testimony presented . . . , [and] we defer to the court's decision to credit [the testimony of petitioner's] expert" (*Matter of State of New York v Pierce*, 79 AD3d 1779, 1781, lv denied 16 NY3d 712 [internal quotation marks omitted]; see *Matter of State of New York v Motzer*, 79 AD3d 1687, 1688).

Entered: June 10, 2011

Patricia L. Morgan
Clerk of the Court