

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

1231

**CA 17-00443**

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND NEMOYER, JJ.

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

V

MEMORANDUM AND ORDER

JAMAAL A., RESPONDENT-APPELLANT.

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CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (KATHLEEN M. TREASURE OF COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Sara Sheldon, A.J.), entered February 2, 2017 in a proceeding pursuant to Mental Hygiene Law article 10. The order, inter alia, committed respondent to a secure treatment facility.

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

Memorandum: On appeal from an order revoking his prior regimen of strict and intensive supervision and treatment (SIST), determining that he is a dangerous sex offender requiring confinement and committing him to a secure treatment facility (see Mental Hygiene Law § 10.01 *et seq.*), respondent contends that Supreme Court erred in determining that he has a mental abnormality that predisposes him to commit sex offenses. That contention is not properly before us. "In a SIST revocation hearing, like in a dispositional hearing following trial on the issue of mental abnormality, the statute gives the court only two dispositional choices—to order civil confinement or to continue a regimen of SIST . . . , both of which assume that respondent has a mental abnormality. The only issue before the court, therefore, is whether the mental abnormality is such that respondent requires confinement . . . In light of that statutory structure, we see no need to address respondent's contention[] that the evidence of mental abnormality was insufficient" (*Matter of State of New York v Breeden*, 140 AD3d 1649, 1649 [4th Dept 2016]; see *Matter of State of New York v David HH.*, 147 AD3d 1230, 1233 [3d Dept 2017], *lv denied* 29 NY3d 913 [2017]).

Contrary to respondent's further contention, petitioner established by clear and convincing evidence (see Mental Hygiene Law § 10.11 [d] [4]) that respondent was a dangerous sex offender requiring confinement, i.e., a person "suffering from a mental

abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that [he] is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" (§ 10.03 [e]; see *Matter of State of New York v George N.*, 160 AD3d 28, 30 [4th Dept 2018]). Although respondent's SIST violations did not involve sexual conduct, they demonstrated an "increased sexual preoccupation, [as well as] ongoing deceptive, manipulative, and victim-grooming behaviors." Moreover, respondent had resisted supervision and seemed unable to refrain from his "impulsive, high-risk behaviors in total disregard of the known potential negative consequences of such behaviors." We thus conclude that the SIST violations "[bore] a close causative relationship to sex offending" (*George N.*, 160 AD3d at 33), and " 'remain highly relevant regarding the level of danger that [respondent] poses to the community with respect to his risk of recidivism' " (*Matter of State of New York v Jason H.*, 82 AD3d 778, 780 [2d Dept 2011]; see *Matter of State of New York v William J.* [appeal No. 2], 151 AD3d 1890, 1891-1892 [4th Dept 2017]; cf. *George N.*, 160 AD3d at 33-34; *Matter of State of New York v Husted*, 145 AD3d 1637, 1638 [4th Dept 2016]).