

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

873

CA 22-01466

PRESENT: SMITH, J.P., BANNISTER, OGDEN, AND GREENWOOD, JJ.

IN THE MATTER OF EZRA B., PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, RESPONDENT-RESPONDENT.

ELIZABETH S. FORTINO, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, UTICA (ANDREW B. PLEWINSKI OF COUNSEL), FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BRIAN LUSIGNAN OF COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (Scott J. DelConte, J.), entered August 16, 2022, in a proceeding pursuant to Mental Hygiene Law article 10. The order, among other things, continued petitioner's confinement to a secure treatment facility.

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

Memorandum: Petitioner appeals from an order, entered after an annual review hearing pursuant to Mental Hygiene Law § 10.09 (d), determining that he is a dangerous sex offender requiring confinement under section 10.03 (e) and directing that he continue to be confined to a secure treatment facility (see § 10.09 [h]). We affirm.

At an annual review hearing, the State has the burden to prove, by clear and convincing evidence, that the individual who is the subject of the hearing is currently a dangerous sex offender requiring confinement (see Mental Hygiene Law § 10.09 [d], [h]). A person may be found to be a dangerous sex offender requiring confinement if that person "suffer[s] from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" (§ 10.03 [e]).

Contrary to petitioner's contention, Supreme Court's determination that he is a dangerous sex offender requiring confinement is not against the weight of the evidence (see *Matter of Nushawn W. v State of New York*, 215 AD3d 1227, 1229 [4th Dept 2023], lv denied 40 NY3d 901 [2023]; *Matter of Ruben M. v State of New York*, 211 AD3d 1590, 1592 [4th Dept 2022]). Both respondent's expert and the independent expert opined that petitioner made insufficient

progress in treatment inasmuch as he failed to address all the incidents of abuse and his sexually deviant behavior. Using two different assessments, the experts determined that petitioner had at least a moderate risk of recidivism, and both experts opined that petitioner could not be safely managed under a regimen of strict and intensive supervision and treatment (see Mental Hygiene Law § 10.07 [f]). We perceive no basis to disturb the court's decision to credit the testimony of those experts (see *Matter of State of New York v Robert T.*, 214 AD3d 1405, 1407 [4th Dept 2023]; *Matter of State of New York v Leslie L.*, 174 AD3d 1326, 1328 [4th Dept 2019], lv denied 34 NY3d 903 [2019]).