

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

1087

CA 17-01450

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

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

V

MEMORANDUM AND ORDER

NATHANIEL W., FOR CIVIL MANAGEMENT PURSUANT TO
ARTICLE 10 OF THE MENTAL HYGIENE LAW,
RESPONDENT-APPELLANT.

SARAH M. FALLON, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, ROCHESTER
(KAREN BAILEY TURNER OF COUNSEL), FOR RESPONDENT-APPELLANT.

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

Appeal from an order of the Supreme Court, Livingston County
(Dennis S. Cohen, A.J.), entered May 2, 2017 in a proceeding pursuant
to Mental Hygiene Law article 10. The order, among other things,
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 pursuant to Mental
Hygiene Law article 10 determining, following a nonjury trial, that he
is a dangerous sex offender requiring confinement (see § 10.03 [e])
and committing him to a secure treatment facility. We affirm.

We reject respondent's contention that the determination is
against the weight of the evidence. Supreme Court "was in the best
position to evaluate the weight and credibility" of the conflicting
expert testimony presented and we see no reason to disturb the court's
decision to credit the testimony of petitioner's expert (*Matter of
Allan M. v State of New York*, 163 AD3d 1493, 1493 [4th Dept 2018]
[internal quotation marks omitted]; see *Matter of State of New York v
Scott W.*, 160 AD3d 1424, 1426 [4th Dept 2018], *lv denied* 31 NY3d 913
[2018]; *Matter of Billinger v State of New York*, 137 AD3d 1757, 1758
[4th Dept 2016], *lv denied* 27 NY3d 911 [2016]).

Entered: November 9, 2018

Mark W. Bennett
Clerk of the Court