

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

955

CA 12-01123

PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND LINDLEY, JJ.

---

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

V

MEMORANDUM AND ORDER

MICHAEL MATTER, RESPONDENT-APPELLANT.

---

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

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

---

Appeal from an order of the Supreme Court, Niagara County  
(Richard C. Kloch, Sr., A.J.), entered April 19, 2012 in a proceeding  
pursuant to Mental Hygiene Law article 10. The order determined that  
respondent is a dangerous sex offender requiring confinement and  
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 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.*). On a prior appeal, we affirmed an order  
determining that respondent is a detained sex offender requiring civil  
management through a regimen of SIST and placing him with the New York  
State Department of Corrections and Community Supervision (*Matter of  
State of New York v Matter*, 103 AD3d 1113). While that prior appeal  
was pending, petitioner filed a petition alleging that respondent had  
violated the conditions and terms of his SIST regimen, and a hearing  
was held on the petition.

We conclude that respondent's constitutional and statutory  
challenges to the treatment he received while in a regimen of SIST are  
not properly before us inasmuch as they are not preserved for our  
review (*see Matter of State of New York v Gooding*, 104 AD3d 1282,  
1282-1283). In any event, "there is no evidence that petitioner . . .  
failed to fulfill its treatment responsibilities or violated  
respondent's due process rights" (*id.* at 1283).

Contrary to respondent's contention, we conclude that petitioner

established by clear and convincing evidence at the hearing that respondent is a dangerous sex offender requiring confinement (see Mental Hygiene Law §§ 10.07 [f]; 10.11 [d] [4]; *Matter of State of New York v Motzer*, 79 AD3d 1687, 1688). Finally, we reject respondent's further contention that "petitioner was required to 'refute the possibility of a less restrictive placement' or that the court was required to specifically address the issue of a less restrictive alternative" (*Gooding*, 104 AD3d at 1282; see *Matter of State of New York v Enrique T.*, 93 AD3d 158, 166-167, lv dismissed 18 NY3d 976).

Entered: September 27, 2013

Frances E. Cafarell  
Clerk of the Court