

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

1038

CA 13-00541

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

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

V

MEMORANDUM AND ORDER

DOUGLAS KENNEDY, RESPONDENT-APPELLANT.

KEVIN J. BAUER, ALBANY, FOR RESPONDENT-APPELLANT.

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

Appeal from an order of the Supreme Court, Erie County (John L. Michalski, A.J.), entered March 11, 2013 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 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. Contrary to respondent's contention, Supreme Court's determination that respondent "is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" is not against the weight of the evidence (§ 10.03 [e]; see *Matter of State of New York v Reeve*, 87 AD3d 1378, 1378, lv denied 18 NY3d 804; see generally § 10.03 [i]). The court was "in the best position to evaluate the weight and credibility of the conflicting psychiatric testimony presented" (*Matter of State of New York v Timothy JJ.*, 70 AD3d 1138, 1144; see *Matter of State of New York v Richard VV.*, 74 AD3d 1402, 1405), and we see no reason to disturb the court's decision to credit the testimony of petitioner's expert over that of respondent's expert (see *Matter of State of New York v Boutelle*, 85 AD3d 1607, 1607; *Timothy JJ.*, 70 AD3d at 1145).

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court