

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

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CA 10-02493

PRESENT: CENTRA, J.P., PERADOTTO, SCONIERS, AND MARTOCHE, JJ.

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

V

MEMORANDUM AND ORDER

DERRICK HARLAND, RESPONDENT-APPELLANT.

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

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (MARLENE O. TUCZINSKI OF COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered July 29, 2010 in a proceeding pursuant to Mental Hygiene Law article 10. The order 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, we conclude that petitioner established by clear and convincing evidence at the dispositional hearing that he is a dangerous sex offender requiring confinement (see § 10.03 [e]; § 10.07 [f]). Supreme 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 Blair*, 87 AD3d 1327, 1327; see *Matter of State of New York v Richard VV.*, 74 AD3d 1402, 1404; *Matter of State of New York v Timothy JJ.*, 70 AD3d 1138, 1144-1145). We see no basis upon which to disturb the court's determination to credit the testimony of petitioner's expert over that of the expert who testified on behalf of respondent (see *Matter of State of New York v Boutelle*, 85 AD3d 1607, 1607; see also *Matter of State of New York v Flagg* [appeal No. 2], 71 AD3d 1528, 1530).

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court