

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

M247851  
E/rr

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI, JJ.

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2016-04960

DECISION & ORDER ON MOTION

In the Matter of State of New York, petitioner-respondent, v Anthony B. (Anonymous), respondent-appellant.

(Index No. 16153/13)

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Appeal from an order of the Supreme Court, Queens County, dated March 1, 2016. By decision and order on motion dated August 9, 2017, this Court granted the petitioner-respondent's motion for an order remitting this matter to the Supreme Court, Queens County, for the purpose of conducting a *Frye* hearing (*see Frye v United States*, 293 F. 1013), and to hold the appeal in abeyance pending the conclusion of the *Frye* hearing. Upon remittitur, the Supreme Court, Queens County, issued a report dated March 12, 2018, in which it stated that it was bound to follow the determination of this Court in *Matter of State of New York v Richard S.* (\_\_\_ AD3d \_\_; 2018 NY Slip Op 01072), that even if it conducted a *Frye* hearing in connection with the appeal in the above-entitled matter and found that the diagnosis of "Other Specified Paraphilic Disorder (Non-Consent)" had achieved general acceptance in the psychiatric and psychological communities, such determination "would be of no moment to the issues raised on the appeal," and that it would await any further instructions from this Court as to whether to conduct a *Frye* hearing.

Now, on the Court's own motion, and upon the report of the Supreme Court, Queens County, dated March 12, 2018, it is

ORDERED that the matter is again remitted to the Supreme Court, Queens County, for the purpose of conducting a *Frye* hearing on the question of whether, under the particular circumstances of this case, the diagnosis of "Other Specified Paraphilic Disorder (Non-Consent)" has achieved general acceptance in the psychiatric and psychological communities so as to make expert testimony on that diagnosis admissible and for a report thereafter; the Supreme Court, Queens County, shall conduct such hearing and file its report to this Court with all convenient speed; and it is further,

March 30, 2018

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ORDERED that the appeal is held in abeyance in the interim.

RIVERA, J.P., DILLON, DUFFY and IANNACCI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court