

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

487

CA 22-00989

PRESENT: PERADOTTO, J.P., BANNISTER, MONTOUR, AND GREENWOOD, JJ.

IN THE MATTER OF RICHARD R., PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, RESPONDENT-RESPONDENT.

TODD G. MONAHAN, LITTLE FALLS, FOR PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (James P. McClusky, J.), entered June 15, 2022, in a proceeding pursuant to Mental Hygiene Law article 10. The order, inter alia, continued the confinement of petitioner to a secure treatment facility.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner appeals from an order, entered after an annual review hearing pursuant to Mental Hygiene Law § 10.09 (d), determining that he is a dangerous sex offender requiring confinement under section 10.03 (e) and directing that he continue to be confined to a secure treatment facility (see § 10.09 [h]). We affirm.

We reject petitioner's contention that the evidence is legally insufficient to establish that he is currently a dangerous sex offender requiring confinement. Pursuant to the Mental Hygiene Law, a person may be found to be a dangerous sex offender requiring confinement if that person "suffer[s] from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" (§ 10.03 [e]). The Mental Hygiene Law defines a mental abnormality as "a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct" (§ 10.03 [i]).

Contrary to petitioner's contention, viewing the evidence in the light most favorable to respondent (see *Matter of State of New York v John S.*, 23 NY3d 326, 348 [2014], rearg denied 24 NY3d 933 [2014]), we

conclude that the evidence is legally sufficient to establish by clear and convincing evidence " 'the predisposition prong of the mental abnormality test' " (*Matter of State of New York v Anthony B.*, 180 AD3d 688, 691 [2d Dept 2020], *lv denied* 35 NY3d 913 [2020]; see *Matter of Edward T. v State of New York*, 185 AD3d 1423, 1424 [4th Dept 2020]). Respondent's expert diagnosed petitioner with pedophilic disorder and other specified personality disorder with antisocial features, which, when viewed in combination, predispose him to commit sex offenses and were sufficiently connected to his sex offending behavior (see *Matter of Charles B. v State of New York*, 192 AD3d 1583, 1585 [4th Dept 2021], *lv denied* 37 NY3d 913 [2021]).

We further conclude that the evidence is legally sufficient to establish by clear and convincing evidence that petitioner has "serious difficulty in controlling" his sexual conduct (Mental Hygiene Law § 10.03 [i]; see *Matter of State of New York v James R.C.*, 165 AD3d 1612, 1613 [4th Dept 2018]). Respondent established that petitioner failed to attend treatment groups, failed to have a relapse prevention plan, and had high scores on his risk assessment instruments (see *Charles B.*, 192 AD3d at 1585-1586; *Matter of State of New York v Scott W.*, 160 AD3d 1424, 1426 [4th Dept 2018], *lv denied* 31 NY3d 913 [2018]). For the aforementioned reasons, we also conclude that respondent met its burden of establishing that petitioner has " 'such an inability to control [his] behavior, that [he] is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility' " (*Edward T.*, 185 AD3d at 1425, quoting § 10.03 [3]; see *Charles B.*, 192 AD3d at 1585-1586).