

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

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**CA 19-00751**

PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, CURRAN, AND WINSLOW, JJ.

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

V

MEMORANDUM AND ORDER

ORLANDO T., RESPONDENT-APPELLANT,  
FOR CIVIL MANAGEMENT PURSUANT TO ARTICLE 10 OF  
THE MENTAL HYGIENE LAW.

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SARAH M. FALLON, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, SYRACUSE  
(EMILY M. NORTH OF COUNSEL), FOR RESPONDENT-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (FREDERICK A. BRODIE OF  
COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Gregory R. Gilbert, J.), entered February 21, 2019 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 pursuant to Mental  
Hygiene Law article 10 determining, following a nonjury trial, that he  
is a detained sex offender who has a mental abnormality (see §§ 10.03  
[g], [i]; 10.07 [d]) and determining, following a dispositional  
hearing, that he is a dangerous sex offender requiring confinement in  
a secure treatment facility (see §§ 10.03 [e]; 10.07 [f]). We affirm.

Contrary to respondent's contention, we conclude that Supreme  
Court's determination that he suffers from a mental abnormality within  
the meaning of the statute is not against the weight of the evidence.  
Here, "the evidence presented by respondent that conflicted with that  
presented by petitioner merely raised a credibility issue for the  
court to resolve, and its determination is entitled to great deference  
given its 'opportunity to evaluate [first-hand] the weight and  
credibility of [the] conflicting expert [opinions]' " (*Matter of State  
of New York v Stein*, 85 AD3d 1646, 1647 [4th Dept 2011], *affd* 20 NY3d  
99 [2012], *cert denied* 568 US 1216 [2013]). Upon our review of the  
record, we conclude that the evidence does not preponderate so greatly  
in respondent's favor that the court could not have reached its  
conclusion on any fair interpretation of the evidence (see *id.*; see  
also *Matter of State of New York v Trombley*, 98 AD3d 1300, 1301 [4th

Dept 2012], *lv denied* 20 NY3d 856 [2013]; *Matter of State of New York v Timothy EE.*, 97 AD3d 996, 996-998 [3d Dept 2012]).

Contrary to respondent's further contention, we conclude that the court's determination that he requires confinement is not against the weight of the evidence. Here, "[t]he court was 'in the best position to evaluate the weight and credibility of the conflicting [expert] testimony presented' " (*Matter of State of New York v Parrott*, 125 AD3d 1438, 1439 [4th Dept 2015], *lv denied* 25 NY3d 911 [2015]), and we see no reason to disturb the court's decision to credit the testimony of petitioner's expert (*see Trombley*, 98 AD3d at 1301).

Entered: June 12, 2020

Mark W. Bennett  
Clerk of the Court