

At a term of the Supreme Court of the State
of New York, held in and for the County
of Oneida on the 13th day of August 2015
at the Onondaga County Courthouse in
Syracuse, New York.

SUPREME COURT
STATE OF NEW YORK ONEIDA COUNTY

In the Matter of the Application of
THE STATE OF NEW YORK,

Petitioner,

-vs-

RICHARD Z., DIN 78-C-0429,
an Inmate in the custody of the New York State
Office of Mental Health

Respondent,

for Civil Management Pursuant to Article 10
of the Mental Hygiene Law

DECISION and ORDER

Index No. CA2007-2605
RJI No. 32-07-6020

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CLERK OF COURT
ONEIDA COUNTY

This Decision and Order results from this Court conducting a hearing pursuant to Mental Hygiene Law Article 10 §10.07(f) to consider whether the Respondent, Richard Z., is a dangerous sex offender requiring civil confinement, or a sex offender requiring Strict and Intensive Supervision and Treatment.

Factual and Procedural Background

The Respondent, Richard Z., was incarcerated for his underlying criminal conviction from June 30, 1978 until October 2007, when he was scheduled to be released after serving his complete sentence in October 2007, whereupon he was held at the Central New York Psychiatric Center, (hereinafter referred to as "CNYPC"), pending a determination of whether or not he was suffering from a "mental abnormality" as defined by Mental Hygiene Law Article 10, (hereinafter referred to as "MHL Article 10"). From that point forward, he voluntarily accepted treatment and services as though he was suffering from a "mental abnormality". Respondent has been a detained sex offender in civil confinement for the past seven (7) years pending a determination as to whether he has a "mental abnormality" pursuant to MHL Article 10. On January 3, 2012, Respondent stipulated that he was a detained sex offender with a "mental abnormality" as defined in MHL Article 10. An Order confirming that stipulated finding was entered on February 24, 2012. There have been numerous

court appearances, motions, hearings, consent orders and appeals on this matter, which have delayed completion of many issues in this case, including the determination for continuation in civil confinement or release on Strict and Intensive Supervision and Treatment (hereinafter referred to as "SIST") pursuant to MHL Article 10 §10.07(f).

This proceeding, pursuant to MHL Article 10 §10.07(f) began on March 6, 2014. After testimony and various appearances and agreements by the parties, it was completed on May 21, 2015. Respondent, Richard Z., has voluntarily been receiving treatment since October 9, 2007 at the CNYPC pending a final determination as to whether he was a sex offender with a "mental abnormality" who should be civilly confined and/or placed on SIST. Richard Z. entered CNYPC on October 9, 2007 with an initial diagnosis that included paraphelia-sexual disorder, poly-substance dependence and antisocial personality disorder. The Respondent began Phase I (orientation) on or about November 21, 2007, and was recommended for Phase II (acquisition and practice) on February 9, 2008, which he began on or about June 6, 2009. The Respondent entered Phase III (skills application-conventional track) which he remained in until November-December of 2013, (four years and six months.) Richard Z. received a demotion to Phase II for receiving non-toxic glue from his 89 year old mother taped in a sweatshirt pocket; paint from his Brother, which was delivered by mail order from a non-approved vendor; and as referred to by the New York State Attorney General, a non-offensive DVD titled "Blue Rose" rated in the PG category, within a greeting card. Additionally, triple hearsay allegations were written in a report wherein one worker told another worker that he overheard Richard Z. on the telephone with his Mother asking her to send \$80.00 in cash to him, which would be a violation of the rules of CNYPC if cash was received. No cash had been received or reportedly ever found.

The Court heard testimony from Independent Psychological Examiner, Dr. Kostas Kostavdakis, whose expert opinion indicated that Richard Z. is a sex offender who requires SIST, and not confinement. The Court also heard from Dr. Rackley, who was Chief Psychiatric Examiner for four and one half years before requesting a demotion back to psychiatric examiner at the New York State Office of Mental Health (hereinafter referred to as "OMH"), witness for the State of New York, testifying that she believed that the Respondent is a sex offender who requires civil confinement. The Court heard testimony from Dr. Christopher Kunkle, Chief Psychiatric Examiner

and Director of the Bureau of Institutional Treatment employed by OMH, as well as other providers who have been treating the Respondent.

At the conclusion of testimony on March 6, 2014, based upon agreement of the parties, this Court ordered that within thirty (30) days of March 6, 2015 the New York State Office of Mental Health was to provide in writing to the Court, a comprehensive treatment plan for the Respondent, including but not limited to the specific areas of "sexual deviance" and "treatment fatigue". This Court further directed that at the end of six (6) months following the March 6, 2014 hearing, the Court would reconvene and continue the dispositional hearing pursuant to MHL Article 10 §10.07(f) to determine the appropriateness for release to the community under SIST or civil confinement, subject to annual reviews.

On April 9, 2014 or thereabouts, the Court received a service plan for the Respondent, which did not address the issues the Court had raised regarding treatment fatigue or sexual deviance which was ordered by this Court to be prepared for this particular Respondent.

On December 11, 2014, Dr. Kostas Kostavdakis testified on behalf of the Respondent. The matter was continued on May 16, 2015, at which time no testimony was offered, however, discussions regarding testimony to be sought from various witnesses was scheduled to determine what "meaningful treatment", as referred to by MHL Article 10 §10.01(a)(b) and (f), has been provided to the Respondent while civilly confined. MHL Article 10 §10.01(a) sets forth that sex offenders should be treated by "an integrated approach that is based on evolving scientific understanding, flexible enough to respond to current needs of individual offenders and sufficient to provide meaningful treatment and to protect the public." MHL Article 10 §10.01(f) provides the system should offer meaningful treatment to sex offenders ... during civil confinement and out-patient supervision.

The hearing was continued on May 19, 2015, at which time Dr. Christopher Kunkle, New York State Office of Mental Health, and Valerie Colasante, New York State Office of Mental Health Forensic Psychologist, testified on behalf of the Petitioner. The hearing was continued for testimony one final time on May 21, 2015, at which time testimony was received from Sandy Drew, Social Worker/Primary Therapist Counselor, and Kara Sebastian, Social Worker, on behalf of the Petitioner.

Clear from the record is that the Respondent has been at CNYPC since October 2007; he has undertaken numerous courses and group programs with review of his progress every six (6) months. He has attended over 700 different group therapy sessions. He has progressed in Phases I - IV of the program as follows:

From 10/07 - 06/08	-	Respondent completed Phase I
From 06/08 - 06/09	-	Respondent completed Phase II
From 06/09 - 06/12	-	Respondent participated in Phase III until demotion
From 12/2013 - present		Respondent demoted and repeating Phase II

As the Court has developed this information over time, and during the testimony of this case, it was determined and confirmed that Phase III is the highest treatment step a patient can achieve in the program. Phase IV is the preparation for a Respondent to be placed on SIST and released into the community, as set forth above. Richard Z. received a demotion to Phase II in December 2013, and has remained there to the present time.

Testimony

Dr. Kostas A. Katsavdakakis was clear in his testimony on December 11, 2014 that Richard Z. remained only a moderate risk for re-offense and that he could be managed effectively through GPS monitoring, random supervision, limited contact with family members, limited access to females, no sexual relationships, random urine screens, and medication to manage sexual urges (T. 12/11/14, pp. 23-24).

Dr. Katsavdakakis did a thorough review for the entire year of 2014 and prior records, indicating that Richard Z. had completed most of his groups satisfactorily (T. 12/11/14, p. 29), and that as early as 2010, Richard Z.'s records indicated the identification of treatment fatigue based upon no clear path for advancement and what was expected of Richard Z. during the program (T. 12/11/14, pp. 25-26). Dr. Katsavdakakis opined that individuals with higher IQ's, such as Richard Z., may be more susceptible to treatment fatigue or treatment exhaustion because, when subjected to multiple program repeats, "they don't seem to be getting out of it" (T. 12/11/14, p. 27). Conversely, individuals with lower IQ's may not be as clear as to what is going on around them, requiring program repeats (T. 12/11/14, p. 27). Individuals with higher IQ's appreciate what is happening rather than someone who is at a lower IQ level (T. 12/11/14, p. 27).

Dr. Katsavdakakis testified that in a sexual offender program the average time being in the program is about six years and that sometimes a person is less interested or motivated, either through exhaustion or fatigue, and in particular, as in the case of Richard Z., it is not clear what the objective of the program is and how to advance from one stage to the other (T. 12/11/14, p. 26). Dr. Katsavdakakis indicated that the programs at CNYPC have good ideas, however, based upon the reports in Richard Z.'s case, the OMH treatment of Richard Z. did not adhere to the program parameters (T. 12/11/14, p. 28). Dr. Katsavdakakis further opined that, based on his knowledge in the US and elsewhere, the program submitted for Richard Z. did not have "program integrity" (T. 12/11/14, p. 28).

In reviewing the records, Dr. Katsavdakakis noted several inconsistencies in the notes; for example, Ms. Sebastian indicated successful completion of the behavioral accountability group, with a second note from an individual named "Johnson" indicating Richard Z. would not get credit for the program (T. 12/11/14, p. 30). In fact, Dr. Katsavdakakis noted that on the first page of the notes from Richard Z.'s psychiatrist, "on the bottom it says he successfully completed behavioral accountability, and there seems to be another reference in the next page he did not, so it's confusing" (T. 12/11/14, p. 30). Dr. Katsavdakakis noted that Richard Z. had admitted his sexual deviance in programming, as indicated in the reports, including his new therapist (T. 12/11/14, p. 31). Dr. Katsavdakakis also noted that, with regard to the Awakening Motivation Group, there was no indication that Richard Z. did not attend and there was no indication of any refusal to attend (T. 12/11/14, p. 35).

When asked, as to where Richard Z. stands right now, what more does he need to do in a confined setting to be able to lower his risk from a moderate risk to a low risk, Dr. Katsavdakakis opined that he does not think there is any other group that would be available to reduce the risk (T. 12/11/14, p. 34).

Contrary to the May 19, 2015 testimony provided by Dr. Christopher Kunkle, Chief Psychiatric Examiner and Director of the Bureau of Institutional Sex Offender Treatment, it is the opinion of this Court that Dr. Kunkle was neither familiar with the file nor the treatment being provided for Richard Z. During the four to five hour testimony by Dr. Kunkle, several inconsistencies and contradictions were observed by this Court.

While Dr. Kunkle indicated that he was familiar with the case of Richard Z. (T. 05/19/15, p. 10), and further stated, "I have knowledge of his treatment. I specifically reviewed his treatment over the last year, and the issues that were, or the steps that were taken to address the issues that were brought up by the Court back in . . . [March 2014; treatment for sexual deviance and treatment fatigue]," he later testified that he did not know all the innovations or changes that were made to the programs for Mr. Z. (T. 05/19/15, p. 36), nor was he familiar with who comprised the treatment team for Mr. Z. (T. 05/19/15, p. 125). Further, Dr. Kunkle testified that he did not know the specifics of Mr. Z.'s programs in preparation for his release into the community through Strict and Intensive Supervision and Treatment (T. 05/19/15, p. 79).

While Dr. Kunkle's assessment of Richard Z. was that he just did not want to comply; exhibited problems of impulse control and attitudes around the rules and how they should apply (T. 05/19/15, pp. 47-48), this was contradicted by the testimony of the respective treatment team members and the various treatment reports prepared by the treatment providers (see records review below). While the Court notes the observations of the various treatment providers, opining inconsistencies exhibited by Richard Z. in the Awakening Motivation Group, consistent participation was noted in several other programs provided to Richard Z, and in which he participated.

Treatment provider Valerie Colasante indicated that Richard Z. had always been attentive, although he did not always participate in the discussion (T. 05/19/15, p. 158). For half of the sessions, however, Richard Z. did speak and contribute (T. 05/19/15, p. 158). While Ms. Colasante indicated that everybody was offered the opportunity to speak at the beginning of each group (T. 05/19/15, p. 159), she did indicate that the group sessions were one hour sessions (T. 05/19/15, p. 159), that each group consisted of maybe eight or nine people (T. 05/19/15, p. 158) and that there was no expectation that any particular participant would talk during each session (T. 05/19/15, p. 159). Ms. Colasante indicated that Richard Z. was not sleeping through the groups as she would have noted it if he was (T. 05/19/15, p. 159). Ms. Colasante indicated that Richard Z. was behaviorally not an issue (T. 05/19/15, p. 165); that he was cooperative, a great resident, and definitely not an unpleasant person to work with, but that treatment wise she would like to have seen more consistency (T. 05/19/15, p. 167). Ms. Colasante indicated that she was not aware of any incidents of Mr. Z. sexually acting out (T. 05/19/15, p. 168). Ms. Colasante did not indicate in what

respect she would have wanted to see more consistency from Mr. Z., it should be noted that he appears to clearly give feedback in the groups in which he is involved (T. 05/19/15, p. 171).

Counselor Sandy Drew indicated that Richard Z. participated in the Awakening Motivation Group at a moderate level and received credit for passing the group (T. 05/21/15, p. 30). Ms. Drew reviewed the procedure for reevaluation, indicating an updated evaluation of individual programs every six months following the initial one-year review (T. 05/21/15, p. 12).

What is troubling to this Court is that, following the initial and subsequent reviews for program adjustments to the Individual Service Plan (ISP) for an individual, the current procedure is not to review all previous ISP's, but to only look at the previous ISP prepared six months earlier as a comparison (T. 05/21/15, p. 27). Of particular concern to the Court is the almost identical programming (methodology) for Richard Z. among the several most recent ISP's (T. 05/21/15, p. 21). It would seem to this Court that, if areas of concern had been identified by the treatment providers, there would have been a corresponding adjustment to the subsequent ISP for Mr. Z. When questioned by this Court as to why Richard Z. was put back in group therapy if he did not participate well, Ms. Drew answered, "I can't answer you" (T. 05/21/15, p. 38).

In focusing on the issue of the deviance log books maintained by Richard Z., Dr. Kunkle first indicated in his testimony (T. 05/19/15, pp. 26, 41) that Mr. Z. had never given his log book to anyone to review; a requirement of the program (T. 05/19/15, p. 26). He later acknowledged during direct examination (T. 05/19/15, pp. 55, 64-65) and on cross-examination (T. 05/19/15, p. 95) that he was incorrect and inaccurate; Richard Z. having in fact turned his log book in on at least one occasion. Treatment provider Valerie Colasante, pursuant to her notes, acknowledged that Richard Z. had turned his log book in on at least one occasion (T. 05/19/15, p. 137) and that Richard Z. was encouraged to continually work on the deviance log and turn it in, but was not asked directly why he was not turning it in more frequently (T. 05/19/15, p. 138). Ms. Colasante does indicate multiple discussions by Richard Z. as to his deviance issues when he was in group (T. 05/19/15, p. 139). Lending further confusion to the issue of the log book is Dr. Kunkle's inconsistent testimony at first that the log books were required for advancement into Phase III, and in the same breath indicating that they were not required for advancement into Phase III (T. 05/19/15, p. 63). During cross-examination, referencing the program narratives for Richard Z., there was an indication that he

continues to keep his sexual deviance log which he plans to turn in to his facilitators . . . to which Dr. Kunkle replied, "all I know is I do not know how to interpret what they mean" (T. 05/19/15, pp. 89-90). Testimony by Kara Sebastian was that she was directed to generate an individualized service plan by Dr. Maximillian, Director of Treatment Services (T. 05/21/15, pp. 46, 47). She further testified that Dr. Maximillian directed what should be in the ISP, which included Richard Z. keeping a log and turning it in weekly...and discussing it in group therapy...(T. 05/21/15, p. 50). During cross-examination, Ms. Sebastian testified that Richard Z. spoke about keeping his deviance log, and how it had been helpful to him. She further testified that he was also discussing his log with group, so neither she nor Valerie Colasante were specifically requiring Richard Z. to turn the log in. (T. 5/21/15, p. 62).

Of particular concern to this Court is the fact that the actual treatment providers (Colasante at T. 05/19/15, p. 149; Drew at T. 05/21/15, p. 29) indicated that they were unaware of the Order of this Court made in March 2014 ordering the filing with this Court of a treatment plan for Richard Z. specifically addressing the issues of sexual deviance and treatment fatigue. In fact, Ms. Colasante testified that she learned in court during this testimony that there was a specific Order by this Court (T. 05/19/15, p. 150).

What is clearly evident to this Court is that Richard Z. is suffering from treatment fatigue. Albert Einstein defined insanity as; the repeating of the same behavior (treatment) over and over again, expecting a different result.

Equally troubling is the fact that Dr. Kunkle refuses to acknowledge the very existence or concept of "treatment fatigue". While Dr. Kunkle indicated that there is no evidence base for the term "treatment fatigue"; that it is not a recognized psychological condition (T. 05/19/15, p. 21), this testimony is contradicted by the testimony of Dr. Kostas A. Katsavdakakis, who indicated that the condition was identified in Richard Z.'s records as early as December 24, 2010 by Dr. de Broize of the Office of Mental Health (OMH) (T. 12/11/14, p. 25; Exh. C 3/6/14 bottom of p. 2). Dr. Kunkle testified that treatment fatigue is not recognized in the development of the programs provided to Mr. Z. or as a problem in the field (T. 05/19/15, p. 21). However, Kara Sebastian prepared a note for the Richard Z. file, which sets forth that he had stated in his old group that he had been "bagged down" (T. 05/21/15, p. 56), when asked by the Court what that meant, Ms. Sebastian responded "he

felt sick of group, and didn't feel like he was getting anything from it". (T. 05/21/15, p. 56). Ms. Sebastian then testified that she was not familiar with the term treatment fatigue, and did not consider addressing Richard Z.'s reference to being "bagged down" because after that disclosure, he was actively participating in his treatment, (T. 05/21/15, pp 56, 57). Rather than admitting the issue of treatment fatigue, Dr. Kunkle opined that the term referred to poor treatment motivation (T. 05/19/15, p. 22) and that Richard Z. was placed in the Awakening Motivation Group (T. 05/19/15, p. 14), designed to address individuals who were showing poor motivation for treatment. Interestingly enough, Dr. Kunkle indicates that Richard Z. was involved with the Awakening Motivation Group for about nine months and has not been in that group since December 2014 (T. 05/19/15, p. 18). Dr. Kunkle indicates that Richard Z. was "inconsistent" (T. 05/19/15, p. 23), rarely participating past very cursory levels (T. 05/19/15, pp. 23-24).

To this Court, contrary to the conclusions of Dr. Kunkle, it would seem that the discontinuance in the Awakening Motivation Group would be an indication that the program objectives had been met. Dr. Kunkle, however, reaches the conclusion that, "[t]hey have done everything that it appears possible to try to motivate him for treatment . . ." (T. 05/19/15, p. 23); it appearing to this Court to be wholly inconsistent; that they simply gave up. In fact, during the testimony of Sandy Drew (T. 05/21/15, pp. 40-41), when pushed by this Court, she indicated that after eight years of treatment plans and multiple therapy sessions with notations of inconsistencies, it would be her opinion that it was "[t]ime for a change . . . [t]ime to look at the method of treatment" (T. 05/21/15, pp. 40-41). This Court would agree.

While this Court notes the demotion to Phase II of Richard Z. due to behavioral issues, per Dr. Kunkle (T. 05/19/15, p 27), referencing the possession of contraband (glue) (T. 05/19/15, p. 28), and a general pattern of rule violations and questionable behavior around possession of contraband and having things sent to him (T. 05/19/15, p. 28), this Court also notes that Dr. Kunkle testified that it is not necessary to reach Phase IV for a recommended release to the community under SIST (T. 05/19/15, p. 81). In fact, during eight years of the program with close to 300 patients being treated, there have been at most only three individuals who have obtained Phase IV status, and Dr. Kunkle testified that Phase II and Phase III individuals have previously been released to the community on

the Commissioner's recommendation (T. 05/19/15, p. 81). Dr. Rackley testified that only one individual who attained Phase IV was released to SIST (T. 03/16/15, p. 23).

The Court heard the testimony of Christine Rackley, PhD, a psychiatric examiner for the New York State Office of Mental Health (OMH), who indicated that she performed only a records review in preparation for her testimony (T. 03/06/14, p. 16). Rather than an interview with Richard Z., or any of the treatment providers, Dr. Rackley indicated that she "felt that her review of the records, what had occurred, and documents in the CNYPC records and any other available records was sufficient" (T. 03/06/14, p. 16). While Dr. Rackley indicated a noncompliance with supervision ((T. 03/06/14, p. 31), rule breaking behavior (T. 03/06/14, p. 41), antisocial orientation (T. 03/06/14, p. 41), negative social influences (T. 03/06/14, p. 42) and deviant sexual interest (T. 03/06/14, p. 43) exhibited by Richard Z., it is clear to this Court from her testimony that her conclusions were based solely upon minor incidents or incidents occurring historically and prior to treatment. In fact this Court believes that Dr. Rackley did not have the desire to perform the necessary historical reviews and conduct an investigative interview with the Respondent; she indicated that she has performed very few annual reviews in her career and that her primary job is to evaluate the initial referral (T. 03/06/14, p.77).

In explaining Richard Z.'s alleged noncompliance with supervision, Dr. Rackley identified incidents concerning a cash transaction (T. 03/06/14, p. 35), incidents regarding a package containing nontoxic glue taped to the inside pocket of a sweatshirt as contraband (T. 03/06/14, p. 35-36), the receipt and ordering of non-approved paint (T. 03/06/14, p. 37), and the receipt of a DVD, family pictures and greeting cards through another resident (T. 03/06/14, pp. 38-40). Dr. Rackley was unfamiliar with what the glue or paint was used for (T. 03/06/14, pp. 63-64, 65), nor was she aware of why it would be considered contraband and not from an approved vendor (T. 03/06/14, p. 65). The glue was nontoxic (T. 03/06/14, p. 63). With regard to the DVD, Dr. Rackley did not determine the nature of the DVD, whether pornographic or not, and did not feel it necessary to discuss the matter with Richard Z. (T. 03/06/14, p. 66). It was subsequently determined that the DVD contained a movie called *Blue Rose*, which was either PG or PG 13 rated (T. 03/06/14, p. 72). *Blue Rose* is a love story which dealt with the issue of addiction.

Dr. Rackley's testimony of antisocial orientation was based solely upon her review of Richard Z.'s historical criminal history regarding parole and rule violations prior to his entry into treatment (T. 03/06/14, p. 42). This was contradicted by providers working directly with Richard Z. who testified he was cooperative, a great resident and definitely not an unpleasant person to work with (T. 05/19/15, p. 167). Dr. Rackley's assessment of negative social influence was based upon the actions of Mr. Z.'s mother and brother assisting and sending items considered contraband (T. 03/06/14, p. 43), without any indication that the family members were aware of the particular rules.

While Dr. Rackley's assessment based on historical data and records may be sufficient for an initial determination; to which she is accustomed to performing, it is the opinion of this Court that her testimony lacked any substance relative to treatment status and recommendations for Richard Z. Dr. Rackley indicated that she is unable to say whether Mr. Z. ever attempted to address his sexual deviancy in the various groups (T. 03/06/14, p. 51), even though he attended over 700 group therapy sessions, and upon cross-examination, when presented with the notes from various groups in which Mr. Z. participated, it was noted that "Mr. Z. was very open to feedback and considered the suggestions and intervention suggested by the group" (T. 03/06/14, p. 57).

In testifying on direct, Dr. Rackley indicated noncompliance of a relapse prevention group only to admit on cross-examination that she was incorrect (T. 03/06/14, p. 58). She admitted that she did not work in the relapse prevention program, and was unsure of the source of the information upon which she based her testimony on direct (T. 03/06/14, pp. 58-59). During her testimony, Dr. Rackley was unfamiliar with the length of time that Richard Z. had been at CNYPC (T. 03/06/14, p. 60), but having refreshed her memory, admitted that for about five and one-half years while at the CNYPC, Richard Z. did not have any significant issues, all contrary to her testimony on direct. Dr. Rackley admitted to missing notation references (T. 03/06/14, p. 62), and that she did not recall reviewing or seeing the class schedules that Richard Z. had participated in (T. 03/06/14, p. 87).

Reports/Records Review

After hearing the conflicting testimony that was received from Dr. Kunkle, New York State Office of Mental Health Psychiatric Examiner; Dr. Rackley, Psychiatric Examiner; and the healthcare providers, Valerie Colasante, Treating Psychologist, and Sandy Drew, Social Worker and primary therapist/counselor at the Office of Mental Health (hereinafter referred to as "OMH") as to

Richard Z.'s cooperation or lack of cooperation in the process, the Court has reviewed forensic evaluation reports, referencing numerous treatment progress and course reports, in chronological order beginning on December 14, 2010, which are as follows.

12/14/2010 - Ms. O'Donnell, Sexual Deviance Group - Mr. Z. was "quietly attentive", and "open in discussing some of the obstacles to adopt a new conflict resolution strategies....."

12/17/2010 - Ms. Patulski, explained that Mr. Z "demonstrated an understanding of the group thus far, and has written assignments and verbal participation generally speaking" Several days later, Ms. Patulski, in a social worker note citing prior records, noted that "he remained a spectator or listener during groups, but remained tensely attentive, supportive and hardly loses his temper".

12/24/2010 - Dr. de Broize explains that "Mr Z. was one of the participants who demonstrated "treatment fatigue".

1/2011, Ms. Patulski writes that Mr. Z. remained a "passive observer" but completed assignments, demonstrating an understanding of the group material, and he was encouraged to continue his effort".

1/24/2011 - Ms. Lamont (Understanding aggression) wrote that Mr. Z. remained attentive and "very involved in group discussion" citing that he identified early signs of anger such as "cursing, heart racing, fist clenching, pacing and plotting revenge...". Ms. Patulski characterized his participation in "Why Group" as "appropriate overall".

1/27/2011 - During addiction group, Ms. Pogoda wrote that his participation was good and "demonstrates understanding of the information presented regarding addictions through his comments and feedback offered during group."

1/31/2011 - Dr. Forshee explained (Phase III Group) that the respondent "attended all sessions" and "appeared attentive to his peers...as evidenced by his eye contact and the relevant questions he posed...will be encouraged to bring his own issues to group..."

1/25/2011 - Ms. Patulski writes that "Mr. Z. continues to accept responsibility for his sexually deviant behavior and continues to work on exploring the various facets of his deviant cycle."

2/21/2011 - Ms. Patulski writes that Mr. Z.'s "participation was a bit stunted these last few weeks, as he chose to remain silent for much of the discussion...participation consisted largely of questions to peers..."

2/28/2011 - Dr. Forshee wrote that the respondent (Sexual Deviance Group), "participated" and identified how he would get bored in his intimate relationships, reported how he used people for sex, money and drugs and challenged peer perceptions.

3/18/2011 - Ms. Patulski, in her Monthly Work Progress Note, indicated the he "externalized his focus on peers in group..."

4/25/2011 - Ms. Pogoda wrote (Four Tools of Recovery) that Mr. Z. acknowledged that he struggled with delaying gratification needs in the past; "He explained that if there was something he wanted (possessions), he borrowed money or stole to get it...", and "demonstrates understandings of materials through his participation in group and assignments".

4/29/2011 - Dr. Forshee noted that while he participated minimally in Sexual Deviance Group, "he agreed that pornography for him was associated with secrets and objectification."

4/23/2011 - Ms. Pogoda (Four Tools Group, noted that Mr. Z. identified "several examples of reasons for avoiding responsibility, accepting responsibility and ways to learn to accept responsibility..."

5/23/2011 - Ms. Patulski (How III Group) explained that while the respondent completed assignments, "his examples have been general and unrelated to his sexual deviance...focus also continued to be concentrated on external factors".

6/15/2011 - Ms. Marciano (Effectiveness Group) wrote that Mr. Z. "throughout the mall session...has demonstrated a fair understanding of the material and he has successfully the objectives of the class..."

7/11/2011 - Ms. Patulski (Road to Freedom) explained that the respondent discussed his drug use cycle within his deviancy, objectification of women and use of speed. Moreover, he explained that a "couple of times a month, maybe two or three times" driving around looking for hitchhikers as well as "identified that he would have sex with his wife 2-3 times a day, fantasize about women he saw on the street, and frequent strip clubs..." Nine days later, she explained, in the Monthly social Work Note, that his participation was "limited" and that he appeared increasingly comfortable discussing the substance abuse rather than sexual deviant arousal or behavior.

7/26/2011 - Mr. Z. was involved in a verbal altercation with a peer in the day room concerning a television channel selection. The peer reportedly "struck" the respondent in the face with a newspaper with no response or retribution.

8/15/2011 - Ms. Marciana (Regulating Emotion) explained that Mr. Z. "demonstrated understanding of class material through his comments about and examples..."

8/19/2011 - Ms. Lamont explained (Relapse Prevention) that he remained attentive, interacted well with peers and identified "thought distortions he had about his marriage".

9/12/2011 - Ms. Patulski (Road to Freedom) noted that Mr. Z. "participated minimally in the group discussion as a whole...has remained attentive to his peers and completed the assignments given. He remains a passive observer much of the time and has not participated in the group discussion in any depth this Mall session." She also noted that Mr. Z. "completed assignment" and identified "ways he attempted to get what he wanted..." Four days later (Monthly Social work Note), she described his participation as "stagnant."

9/21/2011 - Ms. Patulski characterized Mr. Z.'s participation as "limited" and "encouraged to revisit the goals of both his current phase and previous phase as he has demonstrated difficulty in meeting a number of them for quite some time." She cited that he appeared to be more comfortable with discussing his substance use rather than sexual deviance and "has not addressed issues related to his sexual deviance in quite some time..."

10/20/2011 - Ms. Patulski described Mr. Z.'s work in group therapy as "unproductive" and "has not demonstrated the ability to change or replace thinking errors..." Four days later, Ms. Marciana (Criminogenic Needs) wrote that "Mr. Z. completed all assignments...work demonstrated thoughtfulness, consideration of topics...Mr. Z. writes in the past, saying he failed to follow rules in school, stealing to obtain money for illegal drugs..." and acknowledged continued rule breaking by, for example, not attending his A.A. groups. He further explored his sexual deviant arousal patterns, objectification of women, sexual excitement from watching women engage in sexual acts with each other with continued arousal at the present time as well as "sexual self-regulation in terms of using sex to escape problems and feelings, to feel in control, and to feel 'like a man'."

10/28/2011 - Dr. Forshee (Sexual Deviance) wrote that Mr. Z. "attended all sessions and participated appropriately in group discussions..."

11/17/2011 - Ms. Marciana (Criminogenic Needs) explained that Mr. Z. remained attentive, "offered comments and feedback to other group members" and "completed all assigned work as verified by the facilitators checking his workbook..." Moreover, he "demonstrated understanding of the concepts presented in classes through his comments and through his previously reviewed written work..." On the same day, Ms. Patulski wrote (Social Work Monthly Note) that his participation in Group Therapy remained "unproductive" with the information in Criminogenic Needs characterized as "not new" and "has been talking about for quite some time with no new insight."

11/30/2011 - Mr. Velte submitted a PPG Report in which there were "clinically significant" results for Vindictive, Superficial Consenting, Muted Sadism, Consenting Female Initiated and Pervasively Angry with trending for "non-sadistic" and "opportunistic NC".

12/12/2011 - Ms. Marciana (Criminogenic Needs) explained that the respondent remained active in his level of participation and demonstrated a "fair understanding of the concepts presented in class..."

1/17/2012 - Ms. Patulski (Monthly Social Work Note) characterized Mr. Z.'s therapeutic progress as "stagnant" while on 1/26/2012 (Group Treatment III) "his participation has consisted solely of questions and/or feedback to his peers... offered little to no personal information and facilitators have no idea what, if anything, he may be working on/struggling with at the present time..." One day later, Ms. Lamont (Relapse Prevention) explained that the respondent was an "active participant" regarding a group discussion and "participated in a discussion about self-esteem, self-affirmation and how important one's own thoughts are in shaping your view of yourself." One month later, Ms. Patulski noted that he "made no progress with this goal..." referring to Phase III. On 2/23/2012, Ms. Patulski (Group Treatment III) explained that he remained "slightly more open in group over the course of the last month..."

2/24/2012 - Mr. Z. admitted to "mental abnormality" pursuant to Article 10 of Mental Hygiene Law and this Court signed the Order Finding Mental Abnormality.

3/16/2012 - Ms. Patulski characterized Mr. Z. as making "no progress with this goal" in terms of Phase III. On that same day, Ms. Lamont (Relapse Prevention) wrote that when discussing the use of sex and drugs, "Mr. Z. said that he was trying to gain a sense of companionship, connection, and sexual release..., and that around the time of his offense, he wanted revenge, because he thought his wife was having an affair...talked about using sexual assault to gain a sense of control..."

4/20/2012 - Ms. Patulski noted that Mr. Z. was not in "total agreement" with his ISP and "Mr. Z. has not acknowledged any deviant sexual thoughts or fantasies that he has been concerned about since his admission, and therefore has not been actively working on arousal reconditioning."

6/29/2012 - Christopher Bergene was assigned as his Social Worker.

7/26/2012 - Ms. Pogoda wrote that during the Warning Signs/Identification Group, Mr. Z. "identified some of the steps that have led to his use in the past and appears to have put some thought and self-reflection into his written work".

8/15/2012 - Mr. Bergene, in a Social Work Monthly Note, explained that Mr. Z. continued to be unable to replace "thinking errors because his group participation has consisted of supportive feedback and clarifying questions only."

3/30/2012 - Christine Rackley submitted an Article 10 Evaluation Update Report and recommended that Mr. Z. be held at Central New York Psychiatric Center.

9/21/2012 - Ms. Taylor-Thomas noted that it was "reported to me" by another SCTA that he reportedly overheard Mr. Z. speaking on the telephone about sending an "\$80 Disbursement to his Mother in return for \$80 cash."

10/19/2012 - Mr. Bergene continued to cite lack of participation in groups as evidenced by his supportive feedback and clarifying questions.

10/26/2012 - Mr. Bergene requested that the respondent work out issues with another resident which he agreed to and would ask for help if needed.

10/29/2012 - Dr. Farnum explained that Mr. Z. endorsed depressive symptoms such as trouble sleeping and increased his dose of Paxil to 40 mg po qam.

11/9/2012 - Mr. Bergene noted that the treatment team spoke with Mr. Z. regarding a "tube of glue that was found taped to the inside of a sweatshirt pocket. This sweatshirt was then placed inside another package... had been previously informed that he was not allowed to have this glue... was informed that he was not going to be allowed to accept packages from his mother nor will she be allowed to visit him until further notice. Mr. Z. stated that his mother was not trying to sneak the glue into the facility..."

11/8/2012, the respondent was no longer able to accept packages from his mother (Cora Oliver) for thirty days while on 11/16/2012, Mr. Bergene expanded that he "struggled to accept responsibility" and "used sarcasms as a way of coping with this situation..."

3/27/2013, Mr. Z. received a package from his brother containing reported contraband, such as paints, from an "unapproved vendor." The respondent denied any purposeful planning or premeditation.

6/14/2013 - Ms. Pogoda (Warning Signs) wrote that Mr. Z. attended groups, actively participated and submitted all assignments. She further elaborated that he "demonstrated understanding of the importance of challenging what he has identified to his point as high risk actions/urges..." and related material to his personal experiences.

7/17/2013 - Mr. Bergene wrote that with regard to "sexual self-regulation" skills, he "provided little to no details about his sexual offenses", however, there was no Progress Entries with groups centered on "sexual deviance" during this Mall Session.

9/21/2013 - SOTP-ISP, Mr. Z. remained in Phase III or since 6/9/2009 (4 yrs., 3 mos.), denoted as making "minimal progress" with regard to "pro social attitudes".

10/9/2013 - Mr. Z., according to Mr. Bergene, received a package from his brother that included "several models and inside one of containers was a DVD. Mr. Z. was informed that the DVD looked suspiciously packaged..."

11/5/2013 - Mr. Bergene wrote that a Treatment Team Leader spoke with Mr. Z. about a "recent package that had been mailed into the facility by Mr. Z.'s family to another resident. Contained in this package was a DVD that was concealed within a greeting card. Mr. Z. denied having anything to do with this...". Mr. Bergene notified the respondent of a possible "phase demotion" and the respondent "acknowledged this and stated that he understood."

11/6/2013- "Loss of Privileges" entry, Mr. Z.'s "family mailed another resident .a package containing an unapproved DVD. Prior to Mr. Z.'s family mailing in the package, Mr. Z. had mailed several pictures to his family in order to conceal the fact that Mr. Z.'s family had mailed in the package. This is a clear violation of the rules and expectations of the program." Mr. Z. incurred a loss of receiving packages until a further review on 12/3/13.

11/8/2013- Mr. Bergene wrote, in a monthly Social Work entry, that "At this time, he participates in his treatment groups as part of Phase III programming; however, he was recently recommended a Phase Demotion based on his behaviors."

On or around 11/19/2013, Mr. Z. incurred a Phase Demotion.

Analysis

As discussed in testimony above, Dr. Kunkle's testimony was contradicted by himself and other witnesses. Dr. Kunkle indicated that he had reviewed the reports, and that the Respondent had not complied in group therapy. The Court heard from Sandy Drew, Valerie Colasante, and Kara Sebastian, who were the actual care providers, who indicated that Richard Z. did participate in more than half of the group sessions. They testified that there were eight (8) or nine (9) other persons present in these group sessions who also participated, so it was not uncommon that there was not enough time in all sessions for all of the participants to actively participate. Testimony amongst the providers at OMH and records review substantially contradicted the testimony of experts Dr. Kunkle and Dr. Rackley that was presented to the Court regarding Richard Z.'s participation in therapy sessions. In fact, Richard Z. participated and completed assignments in over 700 sessions of group therapy. Testimony from the State of New York's experts indicated Richard Z. had not provided sexual deviance logs which were required by the program. It was subsequently determined that he did in fact provide the program's mandatory sexual deviance logs. In fact, according to providers' testimony, Richard Z. also read from his journal in sessions. After the Court questioned the experts regarding the numerous group therapy sessions, the Court reminded the experts that "insanity is doing the same thing over and over again, and expecting to get a different result". The Court also asked if the doctors thought that the Respondent was getting "meaningful treatment", as set forth in MHL Article 10 §10.01(a)(b)(f). The doctors' testimony was that set backs are common, and that it appears that the Respondent's motivation has changed. There was no clear answer received as to what "meaningful treatment" for Richard Z. was presently being conducted.

The Court also heard testimony that completion of any particular Phase is not necessarily a requisite for advancement to another Phase, and depending on which State's expert we cite, either one (1) or possibly three (3) previous patients had advanced to Phase IV before being released to SIST.

The Court heard testimony that on April 29, 2015, the Respondent had attempted to commit suicide. Testimony was that Respondent had heard devastating news that his Sister had a terminal illness, and that his Mother's health had been substantially regressing, leaving him deeply concerned that he would not be released to be able to see his Mother or his Sister. Doctors testified that he was stable now, and not a danger to himself.¹

The Court then inquired again as to how OMH provided "meaningful treatment", pursuant to MHL Article 10 §10.01(a)(b)(f), to Richard Z., considering that they did not address those Court concerns which were raised earlier for specific treatment to Richard Z. The response from testimony was that deviant sexual thoughts are natural for everyone, but sex offenders particularly need to be more consistent in controlling those thoughts and frequencies. The testimony from the State of New York's doctors of Richard Z. continued to state that they did not believe that Richard Z. has made the progress that they would like him to make. That testimony was unable to define the particular progress he was not showing. Providers indicated that half of the group sessions, he did not speak, but that he was always attentive; that there were always groups of 8 to 9 people in these one-hour sessions; and that others had to speak within that one hour session. Testimony continued that Richard Z. was not sexually acting out; that when he talked about his issues he seemed to be working on it. Richard Z.'s treatment is consisting of three (3) therapy groups three (3) hours per week; two (2) hours one day, and one (1) hour another day. Testimony provided that in each one-hour therapy session, the Respondent and his peers would work on specific issues. Issues presently identified that Richard Z. currently faces is a combination of problems involving family issues, citing his Sister's terminal illness, the stress of this continuing case in Court, being stuck in his failings regarding the same treatment over and over again, and not getting released on SIST. Richard Z. expressed to his treatment providers that he was "bagged down", a Canadian term meaning *tired (to the point of dysfunction)*. See Canadian Oxford Dictionary. U.S. Supreme Court Justice Potter Stewart famously wrote that "hard core pornography" was difficult to define but "I know it when I see it." See *Jacobellis v. State of Ohio*, 378 U.S. 184, 84 S.Ct. 1676. In the case at bar, there is no definition of "meaningful treatment" under MHL Article 10 §10.01(a), nor was there testimony that adequately

¹ A significant factor is that in seven (7) years, Richard Z. is the only patient who attempted to commit suicide in the sex offender treatment program.

defined it. However, this Court knows what meaningful treatment "isn't when it sees it". In this case, we can say having repeated, attended and actively participated in over 700 group therapy sessions, having doctors testify inconsistently as to what is expected of patients in treatment to advance, having no individualized plans for Richard Z. is not "meaningful treatment". Not receiving Court-Ordered treatment when treatment providers are not advised the Order exists, not notifying the Court that OMH does not recognize and there is no treatment available for "treatment fatigue", and letting time pass without addressing the issue is not "meaningful treatment". Doctors who evaluated Richard Z. and recommended treatment are not familiar with progress or positive notes in this patient's records made by providers, and simply focusing on *de minimis* rule violations to mandate a repeat of completed Phases and therapy, is not "meaningful treatment". A common sense definition of "meaningful" can be found in Webster's College Dictionary as "significant, purposeful or (having) value". Richard Z. is not presently receiving "meaningful treatment", and he has received the maximum psychological benefit for treatment as an in-patient at the Central New York Psychiatric Center.

Discussion

This Court has been intricately involved in the civil confinement of the sex offenders pursuant to MHL Article 10 since its inception in 2007. Not only has this Court heard hundreds of cases, it has been to the facilities providing in-patient treatment for civilly confined sex offenders in New York and observed operations of facilities treating sex offenders in Canada. This Court has organized and prepared training programs and materials with the Office of Court Administration, who has sponsored statewide training between the various disciplines, (OMH, Mental Hygiene Legal Services [hereinafter referred to as MHLS], New York Attorney General's Office, Parole, and the Judiciary), which have provided education and direction to other Courts in the State of New York. These seminars have been held in Old Forge, Saratoga, Buffalo and New York City. This Court has attempted to facilitate procedural methods between the various disciplines to reduce unnecessary delays in the legal process for these types of cases. It is not this Courts role or position to legislate, but to follow laws promulgated by legislation and to follow legislative intent.

That should not mean this Court should not express an opinion after seven (7) years of experience rendering decisions based on this statute. Clearly, the legislative intent of the sex

offender civil confinement treatment program was to provide “meaningful treatment” that is set forth in MHL Article 10 §10.01(a)(b)(f) to patients under this statute, and to protect the public from the dangers of recidivism. MHL Article 10 §10.01(a) sets forth that sex offenders should be treated by “an integrated approach that is based on evolving scientific understanding, flexible enough to respond to current needs of individual offenders, and sufficient to provide meaningful treatment and to protect the public.” This Court has made rulings regarding the rights of respondents to have the opportunity for release by receiving available treatment (such as chemical therapy) to reduce their respective desires to sexually act out. *See Matter of State of New York v. Douglas Smith*, Hon. J. Tormey (Annual Review Hearing & Order, Index No.: CA2008-2297). It is well established that chemical therapy has had positive results, with less than 3% recidivism by sexual offenders being treated with this therapy. This Court in the *Matter of Smith*, after hearing testimony from Dr. John Bradford, an internationally renowned psychologist who has dealt with sexual offenders for more than forty (40) years, and found that chemical therapy treatment should be a treatment that the Respondent and his peers can receive if they so choose, and must be given by the State of New York when appropriate. This type of treatment allows respondents to be out in the community, working and contributing to society, and limits the fears of recidivism. The Court in the *Matter of Smith* also found that treatment was necessary in addition to chemical therapy, counseling and group therapies. Yet, since that Decision, the progress in the use of chemical therapy has not moved expeditiously, keeping pace with “evolving scientific understanding” as directed by the New York State Legislature.

In the Canadian system, as testified to by Dr. John Bradford in the *Matter of Smith*, persons that are sexual offenders are placed on lifetime parole and during the course of their imprisonment receive mandatory sex offender treatment. These offenders then may be released to psychiatric facilities and/or a step-down program, such as half-way houses, many while receiving chemical therapy to control sexual urges.

Presently, in the State of New York, housing these individuals at a cost of over \$200,000 per patient appears to be the preferable manner of treating them. There are close to 300 sex offender patients housed in New York psychiatric facilities, with those numbers rising every year. It is time for the State of New York and OMH to review this statute and develop individualized needs for

patients which complies with "meaningful treatment" and that allows patients, such as Richard Z., to progress through the program.

Criminal sex offenders who have been convicted should be diagnosed at the time of conviction as to whether or not they have a "mental abnormality" as defined by MHL Article 10, and given "meaningful treatment" while in prison to prepare them for release. This Court understands, and it is laudable, Dr. Kunkle is trying to facilitate a treatment plan in prisons, but it is largely voluntary participation by the offender without diagnosis that identified those sex offenders with a "mental abnormality". Consideration should be given to the development of a step-down program and lifetime parole for monitoring of these dangerous persons as the intent of MHL Article 10 legislation is to prevent recidivism and danger to the community. Chemical therapy clearly could reduce a respondent's sexual desires and will substantially contribute to assisting the offender in controlling his sexual desires while safeguarding our communities when individuals are placed on SIST, and should be strongly encouraged.

As stated above, this Court has previously in the *Matter of Smith* and other matters, acknowledged the right of individuals to receive available treatments while confined, which may assist and result in these patients controlling their behaviors. This Court fully agrees that persons have rights to decide their treatments, except when those decisions affect the community as a whole or themselves in a negative manner. Those patients who seek chemical therapy have a right to obtain it from the State of New York when they are incarcerated or confined when that clearly could help them avoid or be released from civil confinement under MHL Article 10. As set forth above, these various methods and designs and samples for treatment are what MHL Article 10 §10.01(a) requires when referring to "an integrated approach that is based on evolving scientific understanding...". Therefore, these diverse treatment methods are consistent with the legislative intent of the statute.

This Court believes that the intent of the New York State Legislature and Governor of the State of New York was to provide "meaningful treatment" to people who have a "mental abnormality" where their sexual impulses are so strong that they cannot control those impulses. In order to accomplish that, this Court believes that the Legislature and the Governor of the State of New York should now review this legislation to make any necessary changes to meet the goals that

were truly intended for the safety of the community and treatment for sex offenders with a “mental abnormality” as set forth in MHL Article 10 §10.03(6)(i).

Findings

Dr. Kostas Kostavdakakis provided credible testimony and conducted an extensive review of the treatment records of Richard Z., along with his previous in-person interview of 9.5 hours in his first report of 2010, and a 3.5 hour in-person interview over the course of two consecutive days for this proceeding. Dr. Kostavdakakis testified that Richard Z. should be placed on SIST. Dr. Katsavdakakis' expert opinion, within a degree of professional certainty, is that Richard Z. currently presents a moderate risk of sexual offense and can be effectively managed in the community with extensive SIST requirements.

Dr. Katsavdakakis' testimony and report indicated that since his first report in 2010, Richard Z. had remained in Phase III sex offender treatment program for over four (4) years, with the exception of the demotion in November of 2013. While the Respondent accepted the demotion, it remained unclear to Dr. Katsavdakakis as to the specific type and nature of the DVD and how he, Richard Z., was directly involved with smuggling contraband. Dr. Katsavdakakis stated that he was not trying to dismiss the incident; however, he repeatedly requested information as to the nature and type of DVD with no information provided by OMH, the New York State Office of the Attorney General, and MHLS. During testimony the Court found that the DVD was non-offensive and of a rated PG category.

Dr. Katsavdakakis stated that based on the records reviewed, and when examined in their totality, Richard Z. clearly demonstrated improvements in a variety of areas, including pro-social skills where he was not involved in a physical or verbal altercation in a significant period of time, identification of key risk factors, description of sexual deviant arousal patterns as well as tactics to reduce his risk, including appreciating in the nature, severity, chronicity of his historical risk factors. Dr. Katsavdakakis testified that Richard Z. benefitted from the sex offender program at the New York State Central New York Psychiatric Center from 2007 through 2013 for an approximate six (6) year and three (3) month time period. Dr. Katsavdakakis reported that Richard Z.'s benefit “is not simply related to the time span of six years. The mere time in the Program, by itself, is not enough to denote progress as treatment has not been without setbacks, including moments of lower

participation or frustration. However, these latter emotional reactions are expected in any sexual offender treatment program, whether it is based on a Risk Needs-Responsivity or Good Lives Model or combination thereof. Moreover, his extended time in Phase III and extremely low probability for a transfer to Phase IV, which appears yet to be developed, likely contributed to, as Dr. di Broize characterized in 2010, 'treatment fatigue' and possible emergence of depressive symptoms in 2012 prompting Dr. Farnum to prescribe antidepressant medication to which he complied."

Dr. Katsavdakis in his professional expert opinion, within a degree of professional certainty, stated that Richard Z. is a moderate risk to re-offend in the community, and has benefitted from sexual offender programming. Richard Z. currently does not display such an inability to control his behavior based on his predisposition that he cannot be managed effectively under the extensive SIST. In addition to Richard Z. receiving "meaningful treatment" while on SIST as provided in MHL Article 10 §10.01(c), which includes...a comprehensive system...to protect the public, reduce recidivism and insure offenders have access to proper treatment. Dr. Katsavdakis recommends interventions for mitigating Richard Z. while on SIST requirements such as (1) GPS monitoring, (2) in-person reporting, (3) random/supervised urine analysis screens, (4) on-going involvement in structured cognitive behavioral treatment for sexual offenders, once weekly, with monthly reports sent to the parole, (5) limited and/or supervised contact with family and (6) limited and supervised contact with females, along with the other 85 or so standard conditions of SIST release.²

In addition, Dr. Katsavdakis urges the Court to consider the possibility of medication to help manage sexual urges as a further intervention, monitoring to track Richard Z.'s response and potential side-effects. Dr. Katsavdakis also sets forth that the Court may also add restrictions regarding family interactions if there is a concern that his biological Mother or Brother will attempt to provide material to Richard Z., placing him at risk to commit a sexual offense. Dr. Katsavdakis recommends that the Court specify the duration of limited or supervised contact with family members.

In order to further comply with MHL Article 10 §10.01(c) and its direction to protect the public, the Court is taking the extraordinary measure of appointing a world-renowned expert, Dr.

²Conditions of Strict and Intensive Supervision and Treatment are attached.

John Bradford ³, to render expert advice to the Court for a program of "meaningful treatment" for Richard Z. as a condition of SIST. Unlike the *Matter of the State of New York v. Anthony Cuevas*, 49 AD3d 1324, 853 NYS2d 798, where the Appellate Division found the Court could not dictate to the Department of Corrections and Community Supervision (DOCCS) how to handle prisoners similarly situated, this Order is limited to treatment solely for Richard Z.

The Court finds the testimony of Dr. Katsavdakis, Valerie Colasante, Sandy Drew and Kara Sebastian to be credible. The Court finds the testimony of Dr. Rackley and Dr. Kunkle to be confusing, contradictory, ill-informed and not credible.

Under the inherent powers granted to this Court and in accordance with the New York State Constitution, this Court as a court of equity as well as law, orders this relief in the interest of justice, as well as a matter of law.

Therefore, it is hereby

ORDERED that the Respondent is hereby subject to a regimen of Strict and Intensive Supervision and Treatment (SIST), the conditions of which will be determined by this Court and incorporated into this Order by reference; and it is further

ORDERED that the Respondent is hereby placed under the jurisdiction of the New York State Department of Corrections and Community Supervision, which will supervise the Respondent's regimen of SIST imposed by this order; and it is further

ORDERED that the Respondent be released from custody and onto the regimen of SIST as soon as the conditions of the regimen of SIST have been imposed and acknowledged; and it is further

ORDERED pursuant to Mental Hygiene Law Section 10.11(b)(2), that every four (4) months each service provider designated to provide treatment services to the Respondent submit to this Court, to the Commissioner of the Office of Mental Health, to the Respondent's

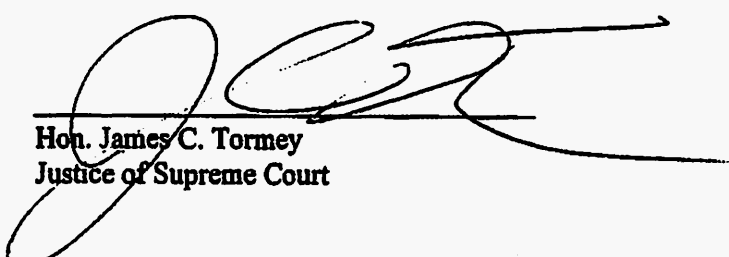
³ Dr. Bradford is Professor of Psychiatry and Acting Clinical Director of the Forensic Treatment Unit South East, Professor of Psychiatry Faculty of Medicine, University of Ottawa. He has a cross appointment as Professor in the Department of Criminology, University of Ottawa. He is also a Professor in the Department of Psychiatry, Queen's University, Adjunct Professor of Psychiatry at the University of Saskatchewan and Adjunct Professor of Psychiatry, University of Alberta. Dr. Bradford's 99 page Curriculum Vitae is available upon request.

supervising parole officer, and to the Office of the Attorney General, a report concerning the Respondent's conduct while under the regimen of SIST; and it is further

ORDERED pursuant to Mental Hygiene Law Section 10.11(f), that the Respondent may petition this Court every two years for modification or termination of his regimen of SIST, with that two-year period commencing no sooner than two years after the regimen of SIST is commenced.

SO ORDERED.

Dated: August 17th, 2015
Syracuse, New York



Hon. James C. Tormey
Justice of Supreme Court

**CONDITIONS OF STRICT AND INTENSIVE SUPERVISION
AND TREATMENT
M.H.L. § 10.11**

STATE OF NEW YORK
SUPREME COURT

COUNTY OF _____

State of New York

Index No.

-against-

Judge:

Part:

, Respondent

Gender:

Date of Birth:

NYSID #:

_____, having been found to be a detained sex offender who suffers from a mental abnormality requiring civil management through a regimen of strict and intensive supervision and treatment pursuant to Article 10 of the N.Y.S. Mental Hygiene Law, is hereby placed under the jurisdiction of the New York State Department of Corrections and Community Supervision and is subject to the lawful conditions set by this Court and the New York State Department of Corrections and Community Supervision.

MANDATORY CONDITIONS OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT

- ☒ 1. I WILL proceed directly to the residence to which I have been released, and, within 24 hours of my release, make my arrival report with the designated officer of the New York State Department of Corrections and Community Supervision at the office of the New York State Department of Corrections and Community Supervision set forth below, unless other instructions are designated on this release agreement.

- OR -

If released directly to a residential facility, I WILL report my arrival at such facility within 24 hours to my Parole Officer at:

Parole Area Office:

Address:

Phone:

Report to:

Release Address:

Street: _____, Apt. _____

City/Town: _____, New York Zip: _____

**CONDITIONS OF STRICT AND INTENSIVE SUPERVISION
AND TREATMENT
M.H.L. § 10.11**

Contact Person: ; Relationship:

Phone:

If I should depend on the local County Department of Social Services Public Benefits to secure my emergency housing, I understand that I will comply with all Department of Social Services requirements to maintain that housing. This will include keeping all intake and follow-up appointments. If I fail to comply with Department of Social Services regulations or requirements and my behavior results in causing me to lose or not obtain housing and/or become homeless, I understand this may be a violation of my Strict and Intensive Supervision and Treatment Conditions and could result in my return to custody to undergo further court proceedings.

If I am denied, terminated, or sanctioned by the Department of Social Services, I will report immediately to my parole officer.

Note: In case of an emergency situation occurring after office hours and on weekends, I WILL contact the New York State Department of Corrections and Community Supervision's Command Center at (212) 239-6159, for staff assistance.

- ☒ 2. I WILL reside at my approved program/residence set forth above. I WILL follow all rules and regulations of the program/residence. I WILL NOT change this program/residence without the knowledge and permission of my Parole Officer.
- ☒ 3. I WILL submit to any medical/psychiatric treatment directed by this Court or my Parole Officer and comply with and remain under any care and treatment so specified.
- ☒ 4. I WILL refrain from contact with any other sex offender(s) except during treatment sessions or unless prior approval is granted by my Parole Officer.
- ☒ 5. I WILL participate in and successfully complete sex offender treatment approved by the NYS Department of Corrections and Community Supervision. This treatment may include, but is not limited to, a psycho-sexual evaluation, a polygraph examination and/or other screening instruments. I shall sign a waiver of confidentiality allowing the Court, the Office of Mental Health, (the Office for People with Developmental Disabilities), the Office of the Attorney General, and the NYS Department of Corrections and Community Supervision to communicate with the treatment provider and have access to the treatment providers' records.
- ☒ 6. I WILL make office and/or written reports as directed.
- ☒ 7. I WILL NOT leave the State of New York or any geographic area defined in writing by my Parole Officer without permission of my Parole Officer.
- ☒ 8. I WILL submit to the taking of fingerprints and photo imaging, as well as physical inspection of my person, whenever directed by my Parole Officer or other representative of the NYS Department of Corrections and Community Supervision.
- ☒ 9. I WILL permit my Parole Officer to visit me at my residence, place of employment, and/or program, and I WILL permit the search and inspection of my person, residence and property. I must discuss any proposed changes in my residence, employment or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment or program status when circumstances beyond my control make prior discussion impossible.

**CONDITIONS OF STRICT AND INTENSIVE SUPERVISION
AND TREATMENT
M.H.L. § 10.11**

- ☒ 10. I **WILL** reply promptly, fully and truthfully to any inquiry of or communication by my Parole Officer or other representative of the NYS Department of Corrections and Community Supervision.
- ☒ 11. I **WILL** notify my Parole Officer immediately whenever I have any contact with or am arrested by any Law Enforcement Agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.
- ☒ 12. I **WILL NOT** be in the company of or fraternize with any person that I know has a criminal record, including a Youthful Offender adjudication, except for accidental encounters in public places, work, school or in any other instance without the permission of my Parole Officer.
- ☒ 13. I **WILL NOT** behave in such manner as to violate the provisions of any law or Order of Protection to which I am subject, **NOR WILL** I engage in behavior that threatens the safety or well-being of myself or others.
- ☒ 14. I **WILL NOT** own, possess, or purchase any shotgun, rifle or firearm of any type without the written permission of my Parole Officer. I **WILL NOT** own, possess or purchase any deadly weapon as defined in the Penal Law or any dangerous knife, dirk, razor, stiletto, or imitation pistol. In addition, I **WILL NOT** own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.
- ☒ 15. In the event that I leave the jurisdiction of the State of New York, I hereby waive my right to resist extradition to the State of New York from any state in the Union and from any territory or country outside the United States. This waiver shall be in full force and effect until I am discharged from Strict and Intensive Supervision and Treatment. I fully understand that I have the right under the Constitution of the United States and under law to contest an effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Strict and Intensive Supervision and Treatment.
- ☒ 16. I **WILL NOT** use or possess any medications or supplements, designed or intended for the purpose of enhancing sexual performance or treating erectile dysfunction, without the written permission of my Parole Officer and the approval of his/her Area Supervisor.
- ☒ 17. I **WILL** participate in the NYS Department of Corrections and Community Supervision's polygraph program as directed by my Parole Officer. I understand that this will include periodic polygraph sessions consisting of a pre-examination interview, polygraph examination and post-test interview with the Polygraph Examiner or my Parole Officer.
- ☒ 18. I **WILL NOT** use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.
- ☒ 19. I **WILL** fully comply with the instructions of my Parole Officer and obey such special additional written conditions imposed by my Parole Officer, a Member of the Board of Parole or an authorized representative of the NYS Department of Corrections and Community Supervision, some of which may be in consultation with or at the direction of OMH or OPWDD.
- ☒ 20. I **WILL** fully comply with all written and verbal instructions by my Parole Officer, or

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authorized representative of the NYS Department of Corrections and Community
Supervision, and obey such special additional
written or verbal conditions imposed.

- ☒ 21. I **WILL** permit the release of information by any and all service providers, including, but not limited to, service providers specifically designated to provide treatment services to me and the periodic submission of progress reports by such designated service providers to the Court, Commissioner of Mental Health, (Commissioner of the Office for People with Developmental Disabilities), the Office of the Attorney General and my Parole Officer.
- ☒ 22. I **WILL** sign releases of confidential medical and mental health information allowing the Court, the Office of Mental Health, (the Office for People with Developmental Disabilities), the NYS Department of Corrections and Community Supervision and the Office of the Attorney General to communicate with any and all medical and mental health treatment providers while I am on SIST, including, but not limited to, designated treatment providers, and have access to any and all medical and mental health treatment providers' records.

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- ☐ 23. I **WILL** provide a sample for DNA testing if conviction appropriate pursuant to Section 995-C, Subdivision 3, of the Executive Law.

Initial _____
- ☐ 24. I **WILL** immediately register as a sex offender with the local Law Enforcement Agency where I reside, if applicable.

Initial _____
- ☐ 25. I **WILL** comply with all the requirements of the Sex Offender Registration Act, if applicable.

Initial _____
- ☐ 26. I **WILL NOT** knowingly enter into or upon any school grounds as that term is defined in Penal Law §220(14) or facilities, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen (18) while one or more of such persons under the age of eighteen (18) are present.

Only under the following circumstances may I enter upon or into the buildings or grounds of such facilities or institutions:

- 1) When I am a registered student, participant or employee of one of the described institutions or facilities and have the written permission of either the

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superintendent or chief administrator of such institution or facility and my Parole Officer for the limited purpose stated by these individuals;

- 2) I am an employee of a business that has a contract with one of the described institutions or facilities and have the written permission of either the superintendent or chief administrator of such institution or facility and my Parole Officer for the limited purpose stated by these individuals; or
- 3) I have a family member who is enrolled in one of the described institutions or facilities and have the written permission of either the superintendent or chief administrator of such institution or facility and my Parole Officer for the limited purpose stated by these individuals.

"School grounds" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

Nothing in this condition shall be construed as restricting any lawful condition of supervision that may be imposed by the Parole Officer or the Court.

Initial _____

- ☐ 27. I **WILL** keep my appointment(s) for any treatment assessment and/or intake required by my SIST Multiple Service Out-patient Treatment Plan. I **WILL** answer fully and truthfully during my treatment evaluation(s) and assessment(s).

Initial _____

- ☐ 28. I **WILL** participate and fully cooperate with the directives of my sex offender treatment program including signing the treatment program's consent to release information to the NYS Department of Corrections and Community Supervision and the Office of Mental Health, and taking any medications as prescribed.

Initial _____

- ☐ 29. I **WILL** enter and complete sex offender treatment as directed by my Parole Officer and remain in treatment until its completion and **WILL NOT** leave without the knowledge and permission of my Parole Officer.

Initial _____

- ☐ 30. I **WILL** follow the directives of my sex offender treatment, attend treatment regularly, participate fully in treatment and not miss scheduled treatment appointments. I **WILL** report any difficulties I experience in my treatment to my provider and my Parole Officer.

Initial _____

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- ☐ 31. I **WILL NOT** leave my sex offender treatment program without prior written permission of my Parole Officer. Should my participation in the treatment program be terminated for any reason, I **WILL** personally and immediately inform my Parole Officer and report to my Parole Officer within 24 hours of the termination.

Initial _____

- ☐ 32. I **WILL** comply with and follow through with the discharge plan and treatment directives developed for me, upon discharge from my sex offender treatment program and/or Office of Mental Health secure treatment facility.

Initial _____

- ☐ 33. I **WILL NOT** frequent areas that sell or promote pornographic/sexual activity or material such as bookstores, massage parlors, topless bars, juice bars and sex shops. Further, I **WILL NOT** purchase or possess pornography or any sexually explicit materials, including pictures and electronic images.

Initial _____

- ☐ 34. I **WILL NOT** engage nor participate in any on-line computer service that involves the exchange of electronic messages or establishes sexual encounters or liaisons.

Initial _____

- ☐ 35. I **WILL NOT** call or view any sexually explicit telephone, chat lines, movies or television services and I **WILL** submit copies of telephone, television, Internet service and/or cable bills to my Parole Officer upon his/her request.

Initial _____

- ☐ 36. I **WILL NOT** purchase, possess or engage in any way, the use of any sexually explicit materials or erotic magazines, tapes, pictures, films or digital images.

Initial _____

- ☐ 37. I **WILL NOT** be in contact with any children under the age of eighteen (18) unless I have prior approval from my Parole Officer, AND a responsible adult age twenty-one and over, approved by the NYS Department of Corrections and Community Supervision, is present during the contact.

Initial _____

- ☐ 38. I **WILL NOT** have contact with the following individual(s):

_____. This means that I **WILL NOT** attempt to meet in person, communicate by letter, telephone, electronically (computer) or through a third party, these individual(s) without the knowledge and permission of my Parole Officer.

Initial _____

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- ☐ 39. I **WILL NOT** enter or be within 300 yards of places where children congregate, such as toy stores, parks, pet stores, schools, playgrounds, video galleries, malls, bike trails, skating rinks, amusement parks, bowling alleys, pool halls, etc., without the prior approval of my Parole Officer.

Initial _____

- ☐ 40. I **WILL NOT** have children's toys, children's magazines/books or children's clothing in my possession without the prior knowledge and permission of my Parole Officer.

Initial _____

- ☐ 41. I **WILL NOT** have animals (puppies, kittens, etc.) in my possession without the prior knowledge and permission of my Parole Officer.

Initial _____

- ☐ 42. I **WILL NOT** have names, addresses, cut out pictures or photos of minors in my possession without the prior knowledge and permission of my Parole Officer.

Initial _____

- ☐ 43. I **WILL NOT** hitchhike or pick up hitchhikers at any time. I **WILL NOT** offer anyone a ride in my motor vehicle without the permission of my Parole Officer.

Initial _____

- ☐ 44. I **WILL NOT** purchase or possess photographic or video equipment without the prior and written permission of my Parole Officer.

Initial _____

- ☐ 45. I **WILL NOT** cross-dress or participate in any sexual fetishes.

Initial _____

- ☐ 46. I **WILL** notify my Parole Officer when I establish a relationship with a consenting adult and then shall inform the other party of my prior history concerning sexual abuse and/or other harmful behaviors, in the presence of my Parole Officer. I **WILL** also inform my Parole Officer of **HOW** and **WHEN** this person can be contacted, and provide an address and telephone number for this person.

Initial _____

- ☐ 47. I **WILL** enter and successfully complete Alcohol/Substance Abuse treatment as directed by my Parole Officer and **WILL NOT** leave that program without the consent of my Parole Officer.

Initial _____

- ☐ 48. I **WILL** abstain from the use of **ALL** alcoholic beverages. I **WILL NOT** frequent any establishment that sells alcoholic beverages for onsite consumption. Additionally, I **WILL NOT** possess or purchase alcohol.

Initial _____

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- ☐ 49. I **WILL** submit to random drug/alcohol testing. Further, I **WILL NOT** purchase, possess, or consume substances for the purpose of altering the results of any substance abuse testing or polygraph examination.

Initial _____

- ☐ 50. I **WILL NOT** use or possess any drug paraphernalia or use or possess any controlled substance without proper medical authorization.

Initial _____

- ☐ 51. I **WILL** participate and fully cooperate with any therapy or counseling as directed by the Court and/or my Parole Officer.

Initial _____

- ☐ 52. I **WILL** abide by the curfew established by my Parole Officer and **WILL** remain in my approved residence during the hours set by my Parole Officer as follows:

Initial _____

- ☐ 53. I **WILL NOT** own or operate a motor vehicle **NOR WILL** I apply for, or possess a driver's license without the knowledge and permission of my Parole Officer. Should I be given permission to apply for and receive a driver's license, I **WILL** keep a driving log specifying distances, dates, times, places and mileage. I **WILL** also inform my Parole Officer of all vehicles that I may operate if given permission to drive. Further, I **WILL** only use this mode of transportation to attend sex offender treatment, medical appointments, vocational training, employment, pre-approved leisure activities and reporting to my Parole Officer. I further agree to go directly to and from these destinations only.

Initial _____

- ☐ 54. I **WILL** carry on my person at all times, a log **TRUTHFULLY** detailing **ALL** of my daily events to include dates, times, places with addresses, vehicle information and people with names for review by my Parole Officer at any given time.

Initial _____

- ☐ 55. I **WILL NOT** rent, operate or be a passenger in any vehicle without the permission of my Parole Officer.

Initial _____

- ☐ 56. I **WILL** live and remain at my approved residence and have **NO** unauthorized visitations from others without prior approval or knowledge of my Parole Officer.

Initial _____

- ☐ 57. I **WILL** seek, obtain and maintain employment as directed by my Parole Officer.

Initial _____

- ☐ 58. I **WILL** submit applications for employment and provide a list of those places to my Parole Officer as directed.

Initial _____

- ☐ 59. I **WILL** enter into a vocational and/or academic program if directed by my Parole

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Officer to do so. I **WILL NOT** leave such program without the knowledge or permission of my Parole Officer.

Initial _____

- ☐ 60. I **WILL NOT** own, possess or use a beeper, scanner, cell phone or similar electronic communication device or other electronic storage device without permission of my Parole Officer. If given permission, I **WILL NOT** own, possess or use one that is capable of accessing or storing video or photos. I **WILL** provide to my Parole Officer any passwords used on any approved electronic communication or storage device(s).

Initial _____

- ☐ 61. I **WILL HAVE NO** telephone blocks, or answering machines used to screen telephone calls.

Initial _____

- ☐ 62. I **WILL NOT** rent or have control of a U.S. Post Office box without the prior knowledge and permission of my Parole Officer.

Initial _____

- ☐ 63. I **WILL** cooperate fully with the implementation of a GPS or **ELECTRONIC MONITORING PROGRAM**. I **WILL NOT** tamper with ANY equipment and **WILL** ensure that all equipment is returned to the NYS Department of Corrections and Community Supervision upon completion. I **WILL** charge my unit as directed by my Parole Officer.

Initial _____

- ☐ 64. I **WILL** possess only one computer at my residence if granted permission by my Parole Officer. If granted permission to have possession of a computer:

- I **WILL NOT** use, possess, have control of any/all computers or computer related materials until I obtain approval by my Parole Officer.
- I **WILL** provide all personal/business phone, Internet and/or cable records to my Parole Officer upon request.
- I **WILL** obtain prior written approval from my Parole Officer to use an electronic bulletin board system, services that provide access to the Internet, or any public or private computer network. Billing/transaction records will be submitted to my Parole Officer upon request.
- I **WILL NOT** use any form of encryption, cryptography, steganography, compression and/or other method that might limit access to, or change the appearance of, data and/or images on any computer without prior written approval from my Parole Officer.
- I **WILL** provide to my Parole Officer any passwords used to protect any information or gain access to any programs, files or other areas of the computer and/or any additional removable storage device(s).
- I **WILL** cooperate with unannounced examinations by my Parole Officer of any and all computer(s) and/or other electronic device(s) to which I have access. This includes access to all data and/or images stored on hard disk drives, floppy

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diskettes, CD ROMs, optical disks, magnetic tape and/or any other storage media whether installed within a device or removable.

- I **WILL** install or allow to be installed at my own expense equipment and/or software to monitor or limit computer use, or remove any hardware device including modem, network card, and/or other device that may be used to provide access to another computer or computers.
- I **WILL** acknowledge that individuals who have access to (my) any computer system and/or other communication or electronic storage devices that are approved will also be subject to monitoring and/or search and seizure. I agree to be fully responsible for all material, data, images and information found on (my) such computer and/or other communication or electronic storage devices at all times.
- I **WILL NOT** attempt to circumvent, alter inhibit, or prevent the functioning of any monitoring or limiting equipment, device or software that has been installed by or at the behest of, or is being utilized by, the NYS Department of Corrections and Community Supervision for the purposes of recording, monitoring or limiting my computer or Internet use and access, **NOR WILL I attempt to remove** or tamper with such equipment, device or software in any way.
- I **WILL NOT** alter or destroy any records of computer use without the approval of the NYS Department of Corrections and Community Supervision. This includes, but is not limited to, the deletion or removal of browser history data regardless of its age, and the possession of software or items designed to boot into or utilize RAM kernels, alter or "wipe" computer media, defeat forensic software, or block monitoring software. This also includes a prohibition against restoring a computer to a previous state or the reinstallation of operating systems without the prior approval of the NYS Department of Corrections and Community Supervision.
- I **WILL NOT**, if prohibited by condition(s) of release, access or possess certain items, information or material, utilize or attempt to utilize any computer or device for purposes of accessing or possessing such items, information or material. If I am prohibited by condition(s) of release from contacting or communicating with any person(s), I **WILL NOT** utilize or attempt to utilize any computer or device for purposes of contacting or communicating with such person(s).

Initial _____

- ☐ 65. I **WILL NOT** use the Internet to access pornographic material, access a commercial social networking website*, communicate with other individuals or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen unless I receive written permission from the Parole Board or my Parole Officer to use the Internet to communicate with a minor child under eighteen years of age who I am the parent of and who I am not otherwise prohibited from communicating with.

* "Commercial social networking website" means: any business, organization or other entity operating a website that permits persons under eighteen years of age to be registered users for the purpose of establishing personal relationships with other users, where such persons under eighteen years of age may: (i) create web pages or

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profiles that provide information about themselves where such web pages or profiles are available to the public or to other users; (ii) engage in direct or real time communication with other users, such as a chat room or instant messengers; and (iii) communicate with persons over eighteen years of age; provided, however, that, for purposes of this, a commercial social networking website does not include a website that permits users to engage in such other activities as are not enumerated herein.

Initial _____

- ☐ 66. I **WILL** participate and fully cooperate with any recommended mental health evaluations and **WILL** fully comply with the mental health provider's recommendations that may include and not be limited to psychiatric examinations, medication therapy, individual therapy, group therapy and appropriate laboratory testing for levels of psychotropic or neuroactive medications.

Initial _____

- ☐ 67. I **WILL** submit to psychiatric examinations as designated by the Commissioner of Mental Health or the NYS Department of Corrections and Community Supervision to determine continued suitability for Strict and Intensive Supervision and Treatment.

Initial _____

- ☐ 68. I **WILL** participate and fully cooperate with my case manager in areas of case management services that may include, but not be limited to, entitlements, housing, vocational, educational and recreational programs.

Initial _____

- ☐ 69. In the event that I cannot be located by the NYS Department of Corrections and Community Supervision at anytime while on Strict and Intensive Supervision and Treatment, I hereby grant permission to the NYS Department of Corrections and Community Supervision to notify media outlets such as Crime Stoppers, Amber Alert, Warrant Watch, etc. of information deemed necessary to return me to supervision.

Initial _____

Additional Conditions Imposed:

- ☒ 70. I will cooperate fully with the implementation of a SCRAM monitor to assure no consumption of alcoholic beverages. I will not tamper with any equipment.

Initial _____

- ☒ 71. I will not use any products other than soap and water on the skin around the SCRAM bracelet.

Initial _____

- ☒ 72. I will not use or possess any product containing alcohol, including, but not limited to: mouthwash, medicinal alcohol, household cleaners and disinfectants, lotions, body washes, perfumes, colognes or other hygiene products that contain alcohol, or any topical application of a product near the SCRAM bracelet in order to tamper with or alter SCRAM readings.

Initial _____

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☒ 73. I will not place any obstruction between my leg and the SCRAM bracelet at any time, including socks or stockings.

Initial _____

☒ 74. I will not submerge the SCRAM bracelet in water.

Initial _____

☒ 75. I will only bathe by shower.

Initial _____

☒ 76. I will, when showering, thoroughly clean the area around the SCRAM bracelet. Failure to rinse away all soap and dry the area around the bracelet may result in a skin rash.

Initial _____

☒ 77. I will, when directed by my Parole Officer to do so, maintain an analog telephone line and electrical service at my place of residence. I will not make any changes in telephone equipment or services at my residence without prior written permission of my Parole Officer. I will notify my Parole Officer immediately if electrical power is lost at my residence. I will personally report to the Parole Office if there are any issues with loss of telephone service at my residence.

Initial _____

☒ 78. I will be fully responsible for any and all SCRAM equipment relevant to and including the devices I have been issued.

Initial _____

☒ 79. I will be in range of the SCRAM modem device as follows: _____, or as directed by my Parole Officer. I will stay within range the entire time the green light is blinking.

Initial _____

☒ 80. I will comply with any request by my Parole Officer to come to the Parole Office for an observed SCRAM reading. I will bring the SCRAM modem to such an appointment.

Initial _____

☒ 81. I will, if my SCRAM readings are completed by direct connect, report to my Parole Officer as follows: _____.

Initial _____

☒ 82. I will comply with all requests by my Parole Officer to be available for any SCRAM readings. This may include reporting to the Parole office, visits to my home or other site designated by my Parole Officer.

Initial _____

☒ 83. I will be financially responsible to the NYS Department of Corrections and Community Supervision for any damages caused by submerging or damaging the SCRAM bracelet or other devices as well as for additional hook up fees for any intentionally damaged equipment, if directed to pay such costs by my Parole Officer or the Court.

Initial _____

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☒ 84. I will call my Parole Officer immediately to report any problem I experience relevant to my SCRAM devices. Furthermore, I will make an office report at _____ A.M. the next business day following such problem.

Initial _____

☒ 85. I will not remove or attempt to remove the SCRAM bracelet or other devices without written permission of my Parole Officer.

Initial _____

I hereby certify that I have read and understand the above conditions of my Strict and Intensive Supervision and Treatment and that I have received a copy of this document.

Signed this _____ day of _____, _____.

Respondent: _____

Dated: _____, _____

Justice of the Supreme Court

Distribution:

NYS DOCCS - NYS Office of Mental Health - Respondent - Attorney for Respondent - Office of the Attorney General
(Rev 4-23-12)