

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: April 15, 2021

529584

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In the Matter of STATE OF NEW  
YORK,

Respondent,

v

MEMORANDUM AND ORDER

KENNETH II.,

Appellant.

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Calendar Date: September 9, 2020

Before: Garry, P.J., Egan Jr., Aarons and Colangelo, JJ.

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Adam H. Van Buskirk, Auburn, for appellant.

Letitia James, Attorney General, Albany (Jonathan D. Hitsous of counsel), for respondent.

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Appeal from an order of the Supreme Court (Reynolds Fitzgerald, J.), entered June 5, 2019 in Cortland County, which granted petitioner's application, in a proceeding pursuant to Mental Hygiene Law article 10, to find respondent to be a dangerous sex offender and confined respondent to a secure treatment facility.

This Court previously withheld decision with respect to this appeal and remitted the matter to Supreme Court for a posttrial Frye hearing (190 AD3d 33, 48 [2020]). Before such hearing could be held, Oneida County Court (Amoroso, J.) conducted an annual review proceeding and, in February 2021, determined that respondent does not currently suffer from a mental abnormality. Accordingly, respondent was released from

civil confinement and is therefore no longer under civil management pursuant to Mental Hygiene Law article 10. Thereafter, Supreme Court (Masler, J.) granted respondent's unopposed motion to dismiss the Frye hearing as moot. Given respondent's release from confinement, the remaining issues presented for review on this appeal are moot (see Matter of Miguel II. v State of New York, 178 AD3d 1157, 1159 [2019]).

Garry, P.J., Egan Jr., Aarons and Colangelo, JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court