

Matter of State of New York v Stout
2016 NY Slip Op 31684(U)
September 8, 2016
Supreme Court, Tioga County
Docket Number: 45266
Judge: Eugene D. Faughnan
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At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tioga County Courthouse, Owego, New York, on the 12th day of July, 2016.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TIOGA COUNTY

In the Matter of the Application of
the State of New York,

Petitioner,

DECISION

Index No. 45266
RJI No. 2014-0343-M

-vs-

CHRISTOPHER STOUT, DIN 08-B-0768, an
inmate in the custody of the New York State
Department of Corrections and Community
Supervision,

Respondent.

For Civil Management Pursuant to Mental Hygiene
Law Article 10

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court pursuant to a Petition dated June 22, 2015¹ filed by Petitioner seeking a hearing to determine whether Christopher Stout ("Respondent") is a dangerous sex offender requiring confinement.

An Order to Show cause was issued on October 8, 2014 by Oneida County Supreme Court directing Respondent to show cause why a determination should not be made finding him to be a dangerous sex offender requiring civil management pursuant to Mental Hygiene Law ("MHL") Article 10. The matter was then transferred to Tioga County Supreme Court, the county of the underlying sex offense, by an Amended Order of Removal dated October 23, 2014. A probable cause hearing was held on January 15, 2015, at which time this Court denied the Respondent's motion for an Order of Release, and found probable cause to believe that the Respondent is a sex offender requiring civil management. (Decision and Order dated January 21, 2015). This matter was scheduled for trial on June 15, 2015. However, on April 17, 2015, respondent executed a written Trial and Disposition Waiver.

On May 4, 2015, the Respondent appeared in this Court and acknowledged his written waiver of Trial and Disposition, and consented to a finding that he is a detained sex offender who suffers from a mental abnormality. Upon the consent of the Petitioner and the Respondent, a finding was made that, by clear and convincing evidence, the Respondent is a detained sex offender who suffers from mental abnormality pursuant to MHL §10.03(q). Again, upon the consent of the parties, the Court found that the Respondent is a sex offender requiring strict and intensive supervision (SIST) and the Respondent was released into SIST under the jurisdiction of the Department of Corrections and Community Supervision (DOCCS) with specific conditions imposed by this Court in its Order of May 4, 2015.

¹Respondent's parole was violated and he was returned to prison on this violation and, pursuant to a sentence imposed on new criminal charges, and the proceedings were held in abeyance pending his release.

On or about May 13, 2015, Respondent was released into the community. On or about June 17, 2015, DOCCS issued an Incident Report indicating that Respondent was taken into custody for violating parole and SIST conditions². These violations, most significantly, involved the fact that on June 16, 2015 Respondent was observed by six young boys while he appeared to be masturbating. The boys contacted the police and the Respondent was arrested and charged with Endangering the Welfare of a Child (PL §260.10) and Public Lewdness (PL §245.03).

Respondent's parole was violated and he pled guilty to one or more of the charges and was sentenced to serve a term concurrent with his remaining original prison term. Petitioner filed a petition for confinement pursuant to MHL §10.11(d) on June 22, 2015 but this Petition was held in abeyance pending Respondent's release from prison. On December 15, 2015, this Court issued a Securing Order directing Respondent not be released upon the completion of his sentence and, upon the consent of the Respondent, directing that he be committed to a secure treatment facility pending further action of this Court.

A hearing was held on July 9, 2016 to determine whether the Respondent, who was previously found to be a sex offender in need of civil management, should be confined in a secure treatment facility or released pursuant to a SIST.

At the hearing, the only witness presented was Jennine Martinez, Psy.D., a licensed psychologist for the New York State Office of Mental Health. Dr. Martinez testified regarding her curriculum vitae (Exhibit 1) which revealed approximately seven years practice as a psychologist, including approximately five years experience in treating and evaluating patients with a history of sexual abuse, and numerous presentations and training sessions pertaining to the treatment and evaluation of sex offenders.

Dr. Martinez also testified regarding her report concerning respondent dated November 20, 2015

²Respondent's parole officer also reported that Respondent violated his 7:00PM curfew as well as other acts which violated the terms of his SIST .

(Exhibit 2). In preparing her report, Dr. Martinez reviewed various records and psychiatric reports, and spoke with collateral contacts as detailed in her report. (Exhibit 2, p. 4). She confirmed that these records, reports and collateral contacts were of the sort that professionals in her field regularly relied upon in treatment, diagnosis and in making determinations regarding placement of sex offenders in need of supervision.

Respondent was 34 years old at the time of the evaluation. Dr. Martinez testified regarding Respondent's longstanding history of sexual misconduct which began when he was a child. These incidents typically involved Respondent rubbing his penis on another child's foot. His victims included his sister and foster siblings. Respondent received youthful offender status with regard to at least one of these incidents. This longstanding history informed the doctor's opinion in that it indicated chronicity.

In 2007, Respondent was arrested and ultimately convicted of 1st Degree Sexual Abuse (the qualifying conviction). At that time, Respondent was in a sexual relationship with an adult female and living in an apartment building. He befriended a nine year old son of a neighbor. He asked the child to come to his apartment and go into the bedroom. He then proceeded to rub his penis on the child's foot until he ejaculated. He used physical force by putting his hand over the child's mouth and also sought oral sex from the child. Dr. Martinez found that this conduct was consistent with Respondent's prior history of sexual misconduct, and was evidence of his sexual arousal through sexually deviant behavior.

In May of 2015, Respondent was released into the community with a SIST. He attended his treatment. However, within a month, it was alleged that he was violating the terms of his SIST including violating his curfew and having internet access. Of greatest significance was his violation occurring on June 16, 2015. At that time, Respondent went to a creek at Livingston Park, Owego, New York and watched several twelve to thirteen year old boys swimming in the creek. The boys reported that he engaged them in conversation and appeared to be masturbating. The police were contacted and he was arrested and charged with Endangering the Welfare of a

Child and Public Lewdness. His parole was violated. He subsequently pled guilty to one or more charges and was sentenced to a prison term to be served concurrent with the remaining sentence for the underlying offense.

During Respondent's periods of incarceration, he has received disciplinary tickets for sexually related misconduct. These include offenses relating to harassment of another inmate, seeking sexual contact with other inmates and touching another inmates buttocks. Respondent has also been disciplined for touching inmates' feet and masturbating while looking at feet. Dr. Martinez testified that the misconduct while incarcerated was evidence of Respondent's difficulty in controlling his behavior.

Dr. Martinez interviewed the Respondent for approximately two hours by video conference. Respondent admitted to misconduct including public lewdness while on SIST. He confirmed that while on SIST, he continued to have deviant thoughts regarding his 2007 victim. However, he denied masturbating other than on June 16, 2015. He admitted to the misconduct on June 16, 2015 and admitted thinking about the bodies of the children while masturbating.

Based upon the various materials reviewed, collateral source interviews and her interview with the Respondent, Dr. Martinez diagnosed the Respondent with Pedophilic Disorder, Nonexclusive (DSM 302.2), Fetishistic Disorder: Foot Fetish (DSM 302.81) and Borderline Personality Disorder with Antisocial Traits (DSM 301.83). Dr. Martinez also diagnosed Respondent with Bipolar Disorder, Most Recent Episode Unspecified (By History).

The Pedophilic Disorder, Nonexclusive diagnosis is supported by the fact that Respondent has offended against both male and female children throughout his lifetime and most recently at the age of 33. Dr. Martinez notes that since Respondent was 15 years old, there have been at least five instances in which he has offended against victims 13 years old or younger.

The Fetishistic Disorder: Foot Fetish diagnosis is supported by the Respondent's long history of

being sexually aroused by viewing others' feet and/or rubbing his penis against others' feet. Respondent has acted upon this arousal on multiple occasions and has been incarcerated for this deviant behavior. Notwithstanding incarceration and other supervision, he has continued to be aroused by others' feet and in some instances act upon that arousal.

The Borderline Personality Disorder with Antisocial Traits Diagnosis is supported by Respondent's impulsive behavior that has often resulted in mental health or legal interventions. Dr. Martinez points to Respondent's history of engaging in self mutilating behavior as well as an attempted suicide on June 12, 2015. Respondent has also displayed inappropriate acts of anger one of which resulted in his 2013 parole violation. Dr. Martinez also believes that Respondent exhibits antisocial personality traits as evidenced by his criminality, lack of empathy for his victims, and deceitfulness.

By history, the respondent also has a long standing diagnosis of Bipolar Disorder. This diagnosis was maintained by Dr. Martinez, but largely due to a lack of a basis to alter this diagnosis.

Dr. Martinez concluded that Respondent has such a strong predisposition to commit sex offenses and such an inability to control his behavior, that he is likely to be a danger to others and commit sex offenses if not confined to a secure treatment facility. She reached this conclusion, in part, based upon actuarial assessments including the Static-99R and the Stable-2007.

The Static-99R is an actuarial tool designed to assist in the prediction of sexual recidivism through the scoring of certain characteristics of the subject. It is not a precise tool predicting likelihood of recidivism of an individual, but rather, a statistical tool which provides some guidance as to the likelihood of recidivism. In this regard, Respondent was scored as an 11. Dr. Martinez opines that this score places Respondent at 7.3 times the recidivism rate of the typical sexual offender, who has a median score of 2.

The Stable-2007 is a statistical tool developed to assess change in intermediate-term status,

assess treatment needs and help predict recidivism. This test was scored by another medical professional, Ann Dillon, S.W. on June 15, 2015. Dr. Martinez reviewed the scoring by Ms. Dillon and concurred in her conclusions. Specifically, Respondent scored a 24 out of a possible 26, indicating high treatment needs and is suggestive of his need for intense supervision.

Based upon these two statistical tools, Dr. Martinez concluded that Respondent was at a high risk to re-offend. However, this is not the sole basis for her conclusion that Respondent has such a strong predisposition to commit sex offenses, and such an inability to control his behavior that he is likely to be a danger to others and commit sex offenses if not confined. In addition, Dr. Martinez points to the Respondent's difficulty with controlling his impulsivity and deviant sexual interests, even with intensive treatment and supervision while in the community, and while incarcerated.

Disposition

"If the court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court shall find the respondent to be a dangerous sex offender requiring confinement." *MHL 10.07 (f)*. However, "[i]f the court does not find that the respondent is a dangerous sex offender requiring confinement, then the court shall make a finding of disposition that the respondent is a sex offender requiring strict and intensive supervision, and the respondent shall be subject to a regimen of strict and intensive supervision and treatment...". *MHL 10.07 (f)*.

A "dangerous sex offender requiring confinement" is defined in the Mental Hygiene Law as "a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an *inability* to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure

treatment facility" *MHL* § 10.03 (e) (italics added). The statute "clearly envisages a distinction between sex offenders who have difficulty controlling their sexual conduct and those who are unable to control it. The former are to be supervised and treated as 'out patients' and only the latter may be confined." *Matter of State of New York v. Michael M.*, 24 NY3d 649, 659 (2014).

In the present matter, the only evidence adduced at the dispositional hearing was from the expert proffered by Petitioner, Dr. Jannine Martinez. Dr. Martinez detailed Respondent's longstanding history of sexual misconduct beginning as a child and first resulting in legal sanction at the age of 15. Respondent has been incarcerated for his misconduct on numerous occasions, and yet continued to re-offend when in prison, and while on parole. Most notably, while in the community on a SIST plan, the Respondent re-offended and was convicted of three counts of Endangering the Welfare of a Child and one count of Public Lewdness. This conduct and the resulting charges led to Respondent's parole being revoked, a new concurrent sentence for this new offense and the instant application for confined treatment. It is worth noting that Respondent was also alleged to have violated his SIST plan by, among other things, having a cell phone with internet access and violating curfew.³

The Court finds that Dr. Martinez testified credibly regarding Respondent's diagnoses of Pedophilic Disorder, Nonexclusive (DSM 302.2), Fetishistic Disorder: Foot Fetish (DSM 302.81) and Borderline Personality Disorder with Antisocial Traits (DSM 301.83). The Court likewise finds the testimony of Dr. Martinez credible and uncontradicted regarding the Respondent's likelihood re-offending. The Court is particularly persuaded by the fact when Respondent was released on SIST in May 13, 2015, he violated his SIST by re-offending after a mere 33 days. This re-offending conduct occurred despite intensive treatment, supervision and the Respondent's knowledge that re-offending could result in incarceration and/or secure

³Little beyond second hand, anecdotal evidence was offered with regard to these and other alleged SIST violations so the Court will not consider these claims in reaching its decision.

treatment⁴.

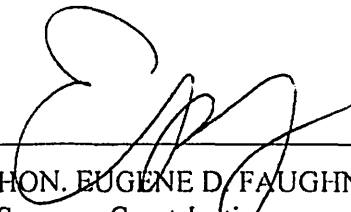
The Court finds that the substantial and uncontroverted evidence supports the conclusion that the Respondent has a high risk for recidivism. He has continued his offending behavior in a supervised environment supporting the conclusion that he is unable to control his offending behavior.

For the reasons set forth herein, the Court finds, by clear and convincing evidence, that the Respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control that behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

Petitioner is directed to submit any proposed order, on notice to Respondent within 10 days.

This constitutes the **Decision** of the Court.

Dated: September 8, 2016
Owego, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice

⁴On May 4, 2015, Respondent appeared in this Court and accepted the imposition of the SIST conditions. At that time, Respondent acknowledged his understanding of those conditions and the fact that violation of those conditions could result in his being placed in a secure treatment facility.