

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of State of New York v. Kerry K.

2020 NY Slip Op 04844 (App. Div. 2020) · No. 2018-12882 · Decided September 2, 2020

SUMMARY

The Appellate Division, Second Department, held that Mental Hygiene Law § 10.06(k) requires the respondent to be re-confined pending a new trial when a prior probable-cause finding remains valid after reversal of a mental-abnormality determination. The court further held that mandatory pretrial confinement was not unconstitutional as applied to Kerry K., who had previously been approved for community supervision under SIST. The order directing confinement was affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; John M. Leventhal, J.; Valerie Brathwaite Nelson, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	September 2, 2020
DOCKET	2018-12882
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kerry K. appealed from an order of the Supreme Court, Suffolk County, directing his commitment to a secure treatment facility, or, with his consent, to the custody of the Department of Corrections and Community Supervision, pending a new trial on whether he had a mental abnormality and, if necessary, a new dispositional hearing.
STANDARD OF REVIEW	De novo review of the statutory interpretation and as-applied constitutional issue; the court determined the meaning and application of Mental Hygiene Law § 10.06(k).
PRECEDENTIAL VALUE	Published opinion; precedential New York Appellate Division decision
PARTIES	Kerry K. (Anonymous) v. State of New York

TOPICS

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PRACTICE AREAS

mental hygiene law

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QUESTIONS PRESENTED

1. Whether Mental Hygiene Law § 10.06(k) requires re-confinement of an article 10 respondent pending a new trial when an undisturbed prior probable-cause determination remains in effect.
2. Whether mandatory pretrial confinement under Mental Hygiene Law § 10.06(k), as applied to an article 10 respondent previously found eligible for release under strict and intensive supervision and treatment, violates due process.

HOLDINGS

1. Mental Hygiene Law § 10.06(k) requires the respondent to be re-confined pending completion of the new trial because the prior probable-cause determination was not disturbed by the earlier appellate reversal and remains valid.
2. Mental Hygiene Law § 10.06(k) is not unconstitutional as applied to Kerry K.; mandatory pretrial confinement based on the valid probable-cause determination does not violate due process.

KEY QUOTATIONS

“Contrary to Kerry K.’s contention, the statutory language is clear and requires that he be re-confined pending the completion of the new trial” ([*4])

“a finding of probable cause to believe that an article 10 sex offender requires civil management because of mental abnormality incorporates the necessary finding of a respondent’s dangerousness” ([*4])

FACTUAL BACKGROUND

Kerry K. was convicted in 1997 of first-degree rape and sentenced to an indeterminate term of seven to twenty-one years. Before his conditional release in 2013, New York petitioned for his civil management under Mental Hygiene Law article 10, and the Supreme Court found probable cause to believe he was a sex offender requiring civil management. Although the Supreme Court initially found a mental abnormality and ordered release under strict and intensive supervision and treatment, the Appellate Division reversed that finding because it rested improperly on hearsay and ordered a new trial. The Supreme Court then ordered Kerry K. re-confined pending the new trial.

PROCEDURAL HISTORY

After a 2013 probable-cause determination under Mental Hygiene Law article 10, the Supreme Court found after trial that Kerry K. suffered from a mental abnormality but ordered release under strict and intensive supervision and treatment. The Appellate Division reversed because the mental-abnormality finding improperly relied on hearsay and remitted for a new trial. On remittitur, the Supreme Court granted the State’s motion to re-confine Kerry K. pending retrial, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of State of New York v. Kerry K., 157 A.D.3d 172
- Matter of State of New York v. Enrique T., 93 A.D.3d 158
- Kansas v. Hendricks, 521 U.S. 346

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