"[A] state may not confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." *O'Connor v. Donaldson*, 422 U.S. 563, 576, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975).

Matter of Scopes, 59 A.D.2d 203, 398 N.Y.S.2d 911 (3rd Dept. 1977): "The lack of any evidence of a recent overt act, attempt or threat, especially in cases where the individual has been kept continuously on certain medications, does not necessarily diminish the likelihood that the individual poses a threat of substantial harm to himself or others. Therefore, we conclude that the lack of any such evidence is not fatal to a finding that an individual is in need of continued confinement. …

"Proof of mental illness and dangerousness is much more subjective than proof in a criminal case. Proof beyond a reasonable doubt would prevent the State from confining many individuals in serious need of psychiatric hospitalization. The burden of proof by clear and convincing evidence serves as substantial protection against erroneous commitment without raising a virtual barrier to commitment which we believe would be caused by exacting a standard of proof beyond a reasonable doubt. We, therefore, align with those courts that have adopted the standard of clear and convincing evidence as the property burden of proof and have rejected the contention that proof beyond a reasonable doubt is mandated by the due process clause … ."

Matter of Sidney JJ, 30 A.D.3d 959, 960, 818 N.Y.S.2d (3rd Dept. 2006): The petitioning agency has the burden of proving, by clear and convincing evidence, "that the person is in need of in-patient care and treatment, such care and treatment is essential to the person's welfare, and the person's judgment is so impaired that he or she is unable to understand the need for care and treatment."

"In order to obtain or continue an order of commitment, the hospital must establish by clear and convincing evidence, not only that the patient is in need of further care and treatment, but that the patient is mentally ill and poses a substantial threat of physical harm to himself or others." *Matter of Edward*, 137 A.D.2d 818 (2nd Dept. 1988).

"'[I]t is possible for many non-violent persons who suffer from a mental disease … to live outside of an institution, and when they prefer to do so, regardless of the wisdom of their decision or the strength of their reasoning powers, they have their constitutional right to follow their own desires.'" *Matter of Harry M.*, 96 A.D. 201, 207, quoting *Kendall v. True*, 391 F.Supp. 413, 418.

"According to the hospital records, the appellant was sometimes withdrawn and hostile, but never physically aggressive. Contrary to Dr. Kruh's testimony, those records indicate that, except for his refusal to take medications, the appellant was generally cooperative. Other than the matters mentioned above and a few other passing comments in the record about events remote in time or of marginal significance, there was no sign that the appellant posed any danger to himself or others. The evidence in the record falls far short of the showing required to justify involuntary commitment. …" *Matter of Edward*, 137 A.D.2d 818, 820 (2nd Dept. 1988).