

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - December 12, 2006

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
DANIEL D. ANGIOLILLO, JJ.

2005-11303

DECISION & ORDER

In the Matter of Alex R. (Anonymous), appellant.

(Docket No. D-11637-05)

Steven Banks, New York, N.Y. (Tamara A. Steckler and Diane Pazar of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Alan G. Krams of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the appeal is from an order of disposition of the Family Court, Queens County (Lubow, J.), dated November 7, 2005, which, upon a fact-finding order of the same court dated September 30, 2005, made after a hearing, finding that the appellant committed acts which, if committed by an adult, would have constituted the crime of attempted assault in the third degree, adjudged him to be a juvenile delinquent and placed him on probation for a period of 18 months and, inter alia, directed him to perform 60 hours of community service. The appeal brings up for review the fact-finding order dated September 30, 2005.

ORDERED that the order of disposition is affirmed, without costs or disbursements.

Viewing the evidence adduced at the fact-finding hearing in the light most favorable to the presentment agency (*see Matter of Donte K.*, 31 AD3d 448, 449; *Matter of Felix D.*, 30 AD3d 598, 599; *Matter of Nikita P.*, 3 AD3d 499, 500), it was legally sufficient to establish that the appellant committed acts which, if committed by an adult, would have constituted the crime of attempted assault in the third degree (*see Penal Law §§ 110.00, 120.00[1]*). Moreover, resolution

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of issues of credibility is primarily a matter to be determined by the trier of fact, which saw and heard the witnesses (*see Matter of Jason Z.*, 19 AD3d 702; *Matter of James B.*, 262 AD2d 480, 481; *cf. People v Romero*, 7 NY3d 633, 644-645). Upon the exercise of our factual review power, we are satisfied that the Family Court's fact-finding determination was not against the weight of the evidence (*cf. CPL 470.15[5]; People v Romero, supra*).

RIVERA, J.P., SPOLZINO, RITTER and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court