

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

D18915
X/kmg

_____AD3d_____

Argued - January 14, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-03719

DECISION & ORDER

In the Matter of Thomas D. (Anonymous), appellant.

(Docket No. D-4081-05)

Neal D. Futerfas, White Plains, N.Y., for appellant.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Thomas G. Gardiner 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, Westchester County (Davidson, J.), entered March 23, 2007, which, upon a fact-finding order of the same court entered April 19, 2006, made after a hearing, finding that the appellant committed an act which, if committed by an adult, would have constituted the crime of sexual abuse in the second degree, adjudged him to be a juvenile delinquent and, among other things, placed him on probation for a period of 15 months. The appeal brings up for review the fact-finding order entered April 19, 2006.

ORDERED that the order of disposition is affirmed.

Upon the exercise of our factual review power (*cf.* CPL 470.15[5]), we are satisfied that the court's findings were not against the weight of the evidence (*see Matter of Rony D.*, 34 AD3d 801; *Matter of Nikkia C.*, 187 AD2d 581, 582).

Moreover, the appellant was not deprived of the effective assistance of counsel (*see Matter of Shaheen P.J.*, 29 AD3d 996, 998; *Matter of Robert P.*, 16 AD3d 512, 513).

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Contrary to the appellant's contention, the Family Court properly chose not to direct an adjournment in contemplation of dismissal (*see* Family Ct Act § 315.3), but rather, to adjudge the appellant to be a juvenile delinquent (*see* Family Ct Act § 352.1). The appellant was not entitled to an adjournment in contemplation of dismissal merely because this was his "first brush with the law," or in light of the other mitigating circumstances that [he] cites" (*Matter of Nikita P.*, 3 AD3d 499, 501, citing *Matter of Steven R.*, 230 AD2d 745). The disposition was appropriate in light of, inter alia, the nature of the incident and the recommendations made in the probation report (*see Matter of Oneil D.*, 35 AD3d 602; *Matter of Julissa R.*, 30 AD3d 526, 528).

The appellant's remaining contentions are unpreserved for appellate review and we decline to review them in the exercise of our interest of justice jurisdiction.

RIVERA, J.P., LIFSON, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court