

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

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_____AD3d_____

Argued - April 8, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2007-07662

DECISION & ORDER

In the Matter of Oscar Justin R. (Anonymous), appellant.

(Docket No. D-1375-07)

Steven Banks, New York, N.Y. (Tamara Steckler and Raymond E. Rogers of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Cheryl Payer 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, Kings County (Weinstein, J.), dated July 27, 2007, which, upon a fact-finding order of the same court dated June 19, 2007, made after a hearing, finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of sexual abuse in the first degree, adjudged him to be a juvenile delinquent and placed him on probation under the supervision of the Probation Department of the County of Kings for a period of 12 months.

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

Viewing the evidence in the light most favorable to the presentment agency (*see Matter of David H.*, 69 NY2d 792; *Matter of Charles S.*, 41 AD3d 484), we find that it was legally sufficient to establish that the appellant committed an act which, if committed by an adult, would have constituted the crime of sexual abuse in the first degree (*see* Penal Law § 130.65[3]).

April 29, 2008

MATTER OF R. (ANONYMOUS), OSCAR JUSTIN

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Moreover, resolution of issues of credibility is primarily a matter to be determined by the trier of fact, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see Matter of Tanasia Elanie E.*, _____AD3d_____, 2008 NY Slip Op 02148 [2d Dept 2008]; *Matter of Christian M.*, 37 AD3d 834). Upon the exercise of our factual review power, we are satisfied that the findings of fact were not against the weight of the evidence (*cf.* CPL 470.15[5]).

The appellant's remaining contention is without merit.

FISHER, J.P., RITTER, FLORIO and CARNI, 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