

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

D21976  
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Submitted - December 19, 2008

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
RANDALL T. ENG, JJ.

2008-07013

DECISION & ORDER

In the Matter of Lorenzo A. (Anonymous), appellant.

(Docket No. D-5423-06)

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Steven Banks, New York, N.Y. (Tamara Steckler and Claire V. Merkine of counsel),  
for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and  
Pamela Seider Dolgow 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 (Hunt, J.), dated April 15, 2008, which, upon a fact-finding order of the same court dated May 12, 2006, made after an admission, finding that the appellant had committed an act which, if committed by an adult, would have constituted the crime of menacing in the third degree, vacated a previous order of disposition dated June 8, 2007, adjudged him to be a juvenile delinquent, and placed him in the custody of the Administration for Children's Services and on probation for a period of 12 months.

ORDERED that the order of disposition dated April 15, 2008, is modified, on the law, by deleting the provision thereof placing the appellant in the custody of the Administration for Children's Services and on probation for a period of 12 months; as so modified, the order of disposition is affirmed, without costs or disbursements.

Where, as here, the Family Court vacates an existing order of disposition and issues a new order based upon a substantial change in circumstances, Family Court Act § 355.1(1) provides that "the date such order expires shall not be later than the expiration date of the original order."

February 3, 2009

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Accordingly, as the presentment agency correctly concedes, the Family Court erred in issuing a new order of disposition which extended the appellant's terms of placement and probation beyond the expiration date of the original order (*see Matter of Jennifer B.*, 256 AD2d 1195, 1196). Since the original order of disposition was to have expired on December 8, 2008, we reduce the appellant's terms of placement and probation to the terms of placement and probation already served.

MASTRO, J.P., FLORIO, BALKIN and ENG, 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