

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

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Submitted - December 22, 2009

FRED T. SANTUCCI, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-03271

DECISION & ORDER

In the Matter of David F. (Anonymous), appellant.

(Docket No. D-24825-08)

Hal B. Greenwald, Yonkers, N.Y., 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, Queens County (Bogacz, J.), dated March 4, 2009, which, upon a fact-finding order of the same court dated November 21, 2008, made upon the appellant's admission, finding that the appellant committed an act which, if committed by an adult, would have constituted the crime of assault in the second degree, adjudged him to be a juvenile delinquent and placed him with the New York State Office of Children and Family Services for a period of 18 months with credit for time spent in detention pending disposition.

ORDERED that the order of disposition is modified, on the facts and in the exercise of discretion, by deleting the provision thereof placing the appellant with the New York State Office of Children and Family Services for a period of 18 months with credit for time spent in detention pending disposition, and substituting therefor a provision placing the appellant on probation for a period of 18 months; as so modified, the order of disposition is affirmed, without costs or disbursements.

Upon adjudicating a person a juvenile delinquent, the Family Court must enter an order of disposition providing for the least restrictive alternative "which is consistent with the needs

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and best interests of the respondent and the need for the protection of the community” (Family Ct Act § 352.2[2][a]). Here, in light of the recommendation of the New York City Department of Probation that the appellant be placed on probation, the appellant’s acceptance into a program which offered community-based services to juveniles placed on probation, including intensive counseling, and the highly favorable reports submitted to the court by the appellant’s former counselor and by the facility in which he was detained pending disposition, the appellant’s placement for a period of 18 months was not the least restrictive dispositional alternative consistent with both the appellant’s best interests and the need for protection of the community (*see Matter of Shourik D.* 65 AD3d 1042; *Matter of Juli P.*, 62 AD3d 588, 589; *Matter of Israel M.*, 57 AD3d 274; *Matter of Jonathan D.*, 33 AD3d 996, 998; *Matter of Kadeem W.*, 31 AD3d 777, 778). Under these circumstances, we modify the order of disposition by imposing an 18-month period of probation upon the appellant, in lieu of his placement with the New York State Office of Children and Family Services.

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court