

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

D30593
H/prt

_____AD3d_____

Submitted - March 10, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2010-07560

DECISION & ORDER

In the Matter of Shaundale W. (Anonymous),
appellant.

(Docket No. D-38680-09)

Geanine Towers, Brooklyn, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and
Ronald E. Sternberg of counsel), for respondent.

In a juvenile delinquency proceeding pursuant to Family Court Act article 3, Shaundale W. appeals from an order of disposition of the Family Court, Kings County (Freeman, J.), dated July 1, 2010, which, upon a fact-finding order of the same court dated March 15, 2010, made upon his admission, finding that he had committed an act which, if committed by an adult, would have constituted the crime of criminal possession of marihuana in the fifth degree, and after a dispositional hearing, adjudged him to be a juvenile delinquent and placed him on enhanced supervision probation for a period of 12 months. The appeal brings up for review the denial, without a hearing, of that branch of the appellant's omnibus motion which was to suppress physical evidence.

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

The Family Court properly denied, without a hearing, that branch of the appellant's omnibus motion which was to suppress physical evidence. "Hearings are not automatic or generally available for the asking by boilerplate allegations" (*People v Mendoza*, 82 NY2d 415, 422). The movant's motion papers must state the grounds of the motion and "contain sworn allegations of fact" (CPL 710.60[1]; *see* Family Ct Act § 330.2[1]). Even assuming, *arguendo*, that the appellant had

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standing to seek suppression of the evidence (*see generally People v Ramirez-Portoreal*, 88 NY2d 99, 108; *People v Ponder*, 54 NY2d 160), the conclusory allegations made in the appellant's motion papers were insufficient to warrant a hearing (*see CPL 710.60[3][b]*). The appellant's motion failed to "raise[] a factual dispute on a material point which must be resolved before the court can decide the legal issue of whether evidence was obtained in a constitutionally permissible manner" (*Matter of Elvin G.*, 12 NY3d 834, 835, quoting *People v Burton*, 6 NY3d 584, 587). Accordingly, that branch of the appellant's omnibus motion which was to suppress physical evidence was properly denied without a hearing (*see CPL 710.60[1]*; FCA 330.2[1]; *People v Mendoza*, 82 NY2d 415; *People v Sanford*, 48 AD3d 221).

The Family Court has broad discretion in entering dispositional orders (*see Matter of Eunique B.*, 73 AD3d 764, 764; *Matter of Ashanti B.*, 62 AD3d 790, 791). Contrary to the appellant's contention, the Family Court did not improvidently exercise its discretion in imposing a 12 month period of enhanced supervision probation, rather than an adjournment in contemplation of dismissal. The record establishes that the Family Court's placement of the appellant on enhanced supervision probation was the least restrictive alternative consistent with his needs in light of his chronic and continuing truancy, his need for services including substance abuse counseling, the inability of his mother to supervise him, and the recommendation made in the probation report that he would benefit from the enhanced supervision program (*see Matter of Katherine W.*, 62 NY2d 947; *Matter of Melissa B.*, 49 AD3d 536; *Matter of Antonio C.*, 294 AD2d 123; *cf. Matter of Anthony M.*, 47 AD3d 434).

FLORIO, J.P., DICKERSON, LEVENTHAL and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court