

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

D36390
T/ct

_____AD3d_____

Submitted - September 28, 2012

WILLIAM F. MASTRO, J.P.
PLUMMER E. LOTT
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2012-00825
2012-01021

DECISION & ORDER

In the Matter of Jade K. (Anonymous).
Suffolk County Department of Social Services,
respondent; Herbie W. (Anonymous), appellant.
(Proceeding No. 1)

In the Matter of Quincy K. (Anonymous).
Suffolk County Department of Social Services,
respondent; Herbie W. (Anonymous), appellant.
(Proceeding No. 2)

(Docket Nos. N-22098-10/11A, N-22099-10/11A)

Regina G. Russell, Port Jefferson Station, N.Y., for appellant.

Dennis M. Cohen, County Attorney, Central Islip, N.Y. (Jeffrey P. Tavel of counsel),
for respondent.

Steven Flaumenhaft, West Sayville, N.Y., attorney for the children.

In related child protective proceedings pursuant to Family Court Act article 10, Herbie W. appeals (1), as limited by his brief, from so much of an order of the Family Court, Suffolk County (Freundlich, J.), dated January 11, 2012, as, after a hearing, granted the petition of the Suffolk County Department of Social Services for a determination that he violated the terms of an order of supervision of the same court dated April 8, 2011, and committed him to a Suffolk County correctional facility for a term of incarceration, and (2), from a decision of the same court dated

November 14, 2012

Page 1.

MATTER OF K. (ANONYMOUS), JADE
MATTER OF K. (ANONYMOUS), QUINCY

January 12, 2012.

ORDERED that the appeal from the decision is dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the order is reversed, on the facts, without costs or disbursements, and the petition is denied.

The evidence at the hearing did not establish, beyond a reasonable doubt, that the appellant willfully violated a prior order of supervision (*see Family Court Act § 1072; Matter of Dorf v Alvalle*, 76 AD3d 629, 630; *Matter of Rubackin v Rubackin*, 62 AD3d 11, 15; *Matter of Anonymous v Anonymous*, 222 AD2d 501, 501-502). Accordingly, the Family Court erred in granting the petition.

MASTRO, J.P., LOTT, AUSTIN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

November 14, 2012

Page 2.

MATTER OF K. (ANONYMOUS), JADE
MATTER OF K. (ANONYMOUS), QUINCY