

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 08-01069

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, AND GORSKI, JJ.

IN THE MATTER OF DWAYNE J.R., JR.,
RESPONDENT-APPELLANT.

CHAUTAUQUA COUNTY ATTORNEY,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

LYLE T. HAJDU, LAW GUARDIAN, LAKEWOOD, FOR RESPONDENT-APPELLANT.

STEPHEN M. ABDELLA, COUNTY ATTORNEY, MAYVILLE (SCOTT F. HARLEY OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Chautauqua County (Judith S. Claire, J.), entered April 9, 2008 in a proceeding pursuant to Family Court Act article 3. The order, inter alia, placed respondent in the custody of the New York State Office of Children and Family Services for a period of five years.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent appeals from an order adjudicating him to be a juvenile delinquent based on the finding that he committed an act that, if committed by an adult, would constitute the crime of murder in the second degree (Penal Law § 125.25 [1]). Family Court conducted a dispositional hearing and determined that petitioner established by a preponderance of the evidence that respondent required a restrictive placement (see Family Ct Act § 353.5 [1]). We reject respondent's contention that the court abused its discretion in failing to order a less restrictive placement (see *Matter of Christopher QQ.*, 40 AD3d 1183, 1184). The court properly considered the background of the 14-year-old respondent; his need for intensive psychotherapy, supervision and educational services; the particularly brutal and violent nature of the murder; the need for the protection of the community in light of the unexpected nature of respondent's actions; and the willing participation of respondent in the murder of the 18-year-old victim, whom he did not know (see § 353.5 [2]; *Christopher QQ.*, 40 AD3d at 1184; *Matter of Lamar J.F.*, 8 AD3d 1091). Inasmuch as the court determined that a restrictive placement was warranted and that respondent committed an act that, if committed by an adult, would constitute a class A felony, the court properly ordered an initial placement in the custody of the New York State Office of Children and Family Services for a period of five years (see § 353.5 [4] [a] [i]), and did not abuse its discretion in directing that respondent initially be confined in a secure facility for a period of 18 months

(see § 353.5 [4] [a] [ii]). We note that the court reduced the initial period of secure confinement by the period of time respondent spent in juvenile detention, which was approximately three months.

Entered: March 27, 2009

JoAnn M. Wahl
Clerk of the Court