

NEW YORK COURT OF APPEALS

Matter of Markim Q.

7 N.Y.3d 405, 855 N.E.2d 1160 (2006) · Decided September 21, 2006

SUMMARY

The New York Court of Appeals held that defects in a petition alleging a juvenile probation violation are not jurisdictional and must be preserved for appellate review. Unlike an original juvenile delinquency petition, a violation-of-probation petition does not create the court's jurisdiction because jurisdiction continues from the original proceeding. The court reversed the Appellate Division and reinstated Family Court's amended order of disposition without reaching the merits of the petition's alleged defects.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	R.S. Smith, J.; Chief Judge Kaye; G.B. Smith; Ciparick; Rosenblatt; Graffeo; Read
JURISDICTION	New York
DECIDED	September 21, 2006
DISPOSITION	reversed
PROCEDURAL POSTURE	After Family Court found that Markim Q. violated probation and amended its disposition order, the Appellate Division reversed on the ground that alleged facial insufficiency of the violation-of-probation petition was a nonwaivable jurisdictional defect. The Court of Appeals reversed the Appellate Division and reinstated Family Court's amended disposition order.
STANDARD OF REVIEW	Whether alleged defects in a violation-of-probation petition were jurisdictional and could be raised for the first time on appeal was reviewed as a question of law.
PRECEDENTIAL VALUE	Published New York Court of Appeals opinion; binding precedent in New York.
PARTIES	Corporation Counsel of the City of New York v. Markim Q.

TOPICS

family law procedure

preservation of error

appellate procedure

statutory interpretation

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PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether alleged defects in a violation-of-probation petition under Family Court Act § 360.2 are jurisdictional and may be raised for the first time on appeal.
2. Whether the alleged defects in Markim Q.'s violation-of-probation petition required preservation in Family Court.

HOLDINGS

1. A defect in a violation-of-probation petition is not a jurisdictional defect merely because the petition allegedly lacks sworn or nonhearsay allegations. Only a defect in the petition originating the juvenile delinquency proceeding is jurisdictional in the relevant sense and may be raised for the first time on appeal.

KEY QUOTATIONS

“Only a defect in the petition originating the proceeding is “jurisdictional” in the sense that it need not be preserved and can be raised for the first time on appeal.” (7 N.Y.3d at 405)

“A VOP petition, by contrast, is not the foundation of the court’s jurisdiction. It does not commence a new proceeding, but is simply a new step in an existing one.” (7 N.Y.3d at 410)

“Because defects in VOP petitions can be cured by amendment, there is a good reason, absent in the case of original petitions, for requiring a party to complain of those defects at a time when cure is still possible.” (7 N.Y.3d at 411)

FACTUAL BACKGROUND

Markim Q. was adjudicated a juvenile delinquent after a school altercation and was placed on probation. A violation-of-probation petition alleged that he violated a condition requiring regular school attendance, relying on a certified school attendance report showing that he attended only eight days in November 2003. He did not object to the petition or to admission of the attendance report, but later argued for the first time on appeal that the petition lacked sworn, nonhearsay allegations.

PROCEDURAL HISTORY

Markim was adjudicated a juvenile delinquent after admitting an attempted assault charge and was placed on probation. The Department of Probation then filed a violation-of-probation petition alleging, among other things, that he failed to attend school regularly. Family Court found a probation violation and placed him with the Office of Children and Family Services for up to 12 months. The Appellate Division reversed, but the Court of Appeals reversed that order and reinstated Family Court's order.

DISPOSITION

reversed

CASES CITED

- Matter of Michael M., 3 N.Y.3d 441 (2004)
- Matter of Neftali D., 85 N.Y.2d 631 (1995)
- Matter of Rodney J., 83 N.Y.2d 503 (1994)
- Matter of Detrece H., 78 N.Y.2d 107 (1991)
- Matter of Vincent B., 239 A.D.2d 925 (4th Dep't 1997)
- People v. Casey, 95 N.Y.2d 354 (2000)

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