

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES MASON, ¹	§
	§ No. 564, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Case No. 0707012904
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 13, 2008

Decided: November 26, 2008

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

ORDER

This 26th day of November 2008, it appears to the Court that:

(1) On November 13, 2008, the Family Court filed a certification of a question of law in this Court. For the reasons that follow, we conclude that the certification must be REFUSED.

(2) On July 28, 2008, following a trial in the Family Court, James Mason, a minor, was adjudicated delinquent on charges of conspiracy, rape, unlawful sexual contact, unlawful imprisonment, terroristic threatening, aggravated menacing, and possession of a deadly weapon. On August 31,

¹ The Court hereby assigns a pseudonym to the minor child involved in these proceedings. Supr. Ct. R. 7(d).

2008, prior to sentencing, a mental health evaluation was completed for Mason by the Department of Services for Children, Youth and Their Families, Division of Youth Rehabilitative Services (“DFS”). The child mental health psychologist who did the evaluation recommended individual counseling for Mason. Mason’s attorney requested the Family Court to adopt the recommendation of DFS. The State of Delaware requested the Family Court to incarcerate Mason at Ferris School in Delaware.

(3) At the sentencing hearing, the Family Court sentenced Mason to a Level IV residential treatment program located in Pennsylvania, since there was no such treatment facility available in Delaware. On October 1, 2008, Mason’s counsel filed a motion to modify his sentence on the ground that the Family Court’s sentence was improper, because the Family Court was mandated by law to accept the recommendation of DFS for placement of juvenile sex offenders.² The Family Court denied the motion to modify Mason’s sentence.

(4) In its certification, the Family Court asks this Court to address whether the Family Court is mandated by statute to accept the recommendation of DFS for placement of juvenile sex offenders or whether it may exercise its discretion to adopt other alternatives.

² Del. Code Ann. tit. 10, § 1009(b) (15).

(5) Under Supreme Court Rule 41(a), “. . . Delaware courts may, on motion or sua sponte, certify to this Court for decision a question or questions of law arising in any case before it **prior to the entry of final judgment** if there is an important and urgent reason for an immediate determination of such question or questions by this Court and **the certifying court has not decided the question or questions in the case.**” (Emphasis supplied). In this case, the Family Court entered a final judgment when it issued its sentencing order and, in entering that order as well as denying the motion for sentence modification, has decided the legal question it now asks us to determine.³ As such, we conclude that the instant certification of a question of law must be refused.

NOW, THEREFORE, IT IS ORDERED that the Family Court’s certification of a question of law is REFUSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ In fact, Mason’s attorney has filed an appeal in this matter, which is now pending in this Court. *Mason v. State*, Del. Supr., No. 521, 2008.