

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN - 5 2002
JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

<p>A.B.H.,</p> <p style="padding-left: 100px;">Appellant,</p> <p>v.</p> <p>THE STATE OF OKLAHOMA,</p> <p style="padding-left: 100px;">Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. J 2002-0247</p>
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ACCELERATED DOCKET ORDER

Appellant, born May 31, 1985, was charged as a Youthful Offender October 1, 2001, in the District Court of Cleveland County, Case No. CF-2001-1279, with Assault and Battery With A Deadly Weapon With Intent To Kill. On October 16, 2001, the State filed a Motion for Adult Sentencing. Following a hearing February 8, 2002, the Honorable Tom A. Lucas, District Judge, granted the State's motion. Appellant appeals from the order of the District Court sustaining the State's motion to sentence him as an adult should he be convicted.

On appeal Appellant raised two propositions of error:

1. The trial court abused its discretion in not certifying Appellant as a Youthful Offender.

2. Appellant's right to due process was denied by the excessive delay by the trial court in hearing the State's motion to have Appellant stand trial as an adult. In addition, the delay of nearly four months from the time the State filed its motion to sentence Appellant as an adult worked to the disadvantage of Appellant, and the order granting the State's motion to sentence Appellant as an adult should be reversed under the doctrine of laches.

Pursuant to Rule 11.2(A)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions were presented to this Court in oral argument May 16, 2002, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

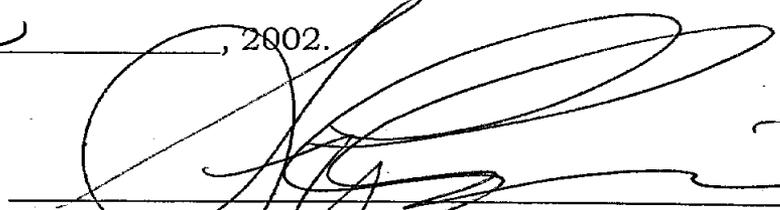
Section 7306-2.8 of Title 10 directs the trial judge to certify the person as eligible for the imposition of an adult sentence only if the trial court finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender. Based upon a review of the record before this Court and after hearing oral argument, we find the State did not meet its burden. We do not find clear and convincing evidence in the record to support the trial judge's findings and conclusions. Both the Certification Study and the Psychological Evaluation prepared and reviewed by the trial judge submit that Appellant can complete a plan of rehabilitation and that the public can be adequately protected if Appellant is sentenced as a Youthful Offender. These submissions were not refuted by the State.

Therefore, the order of the District Court of Cleveland County granting the State's motion for imposition of an adult sentence is **REVERSED** and the matter is **REMANDED** to the District Court for further proceedings consistent with this Order.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 5th

day of June, 2002.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge



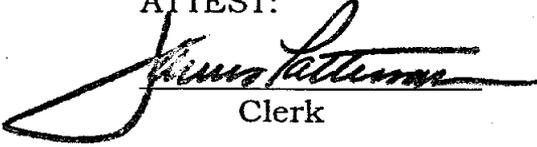
RETA M. STRUBHAR, Judge

DISSENTS



STEVE LILE, Judge

ATTEST:



Clerk