



dismissed Case No. CF-2008-1454. On October 7, 2009, the State filed a Juvenile Petition, Case No. JDL-2009-142, charging Appellant with Count 1 - Rape by Instrumentation and Count 2 - Lewd Molestation.

Six months later on April 8, 2010, the Honorable Stephen Bonner, Associate District Judge, dismissed Case No. JDL-2009-142 "pursuant to failed plea negotiations" and ordered the case be refiled as a "Youthful Offender." Case No. CF-2010-0574, charging Appellant as a Youthful Offender with Count 1 - Rape First Degree-Instrumentation and Count 2 - Lewd Molestation of a Minor, was filed on April 21, 2010. Appellant was eighteen years, three months when this case was filed.

Appellant's motion to dismiss "due to prior certification as a juvenile" was denied by Judge Walkley on October 15, 2010.

On May 26, 2011, the Honorable Michael D. Tupper, Special Judge, denied Appellant's subsequent motion for certification as a juvenile and ordered the case to proceed as a Youthful Offender. Appellant was nineteen years, four months, when this order was issued. Appellant now appeals to this Court from the order of the District Court.

Pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), this appeal was automatically assigned to the Accelerated Docket of this Court. Oral argument was held September 8, 2011, pursuant to Rule 11.2(E). At the conclusion of oral argument, the matter was taken under advisement.

Appellant raised three propositions of error:

1. The District Court's 2009 finding in this case certifying Appellant as a juvenile was an unappealed final order that was not subject to review by the trial court in 2011.
2. The refiling of Appellant's case from the juvenile docket to the youthful offender docket was the result of prosecutorial misconduct, impermissible, resulted in delay, and denied Appellant of his right to a jury trial.
3. Delay in the proceedings unduly prejudiced Appellant in violation of the Sixth and Fourteenth Amendments to the United States Constitution and the Rules of the Court of Criminal Appeals governing juvenile proceedings.

Finding merit to Appellant's first proposition of error, we do not find it necessary to address the remaining propositions. Title 10A O.S.Supp.2009, § 2-5-205(F), clearly directs that the order certifying a person as an alleged juvenile delinquent "shall be a final order, appealable to the Court of Criminal Appeals when entered." Neither party appealed the final order entered by Judge Walkley on October 2, 2009, certifying Appellant as a juvenile. Additionally, Section 2-5-205(G) directs that an order certifying the accused person as an alleged juvenile delinquent "shall not be reviewable by the trial court."

While we agree with Appellee's argument that the State has the authority to dismiss a case as set forth in Section 815 of Title 22, we find no authority allowing the State to refile a matter that has been dismissed as it did in this case. Once the State failed to appeal Judge Walkley's October 2, 2009, order certifying Appellant as a juvenile, the order became final and was no longer subject to further review.

### **DECISION**

The order of the District Court of Cleveland County denying Appellant's

motion for certification as a Juvenile is **REVERSED**. The matter is **REMANDED** to the District Court **WITH INSTRUCTIONS TO DISMISS CASE NO. CF-2010-0574**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY  
THE HONORABLE MICHAEL D. TUPPER, SPECIAL JUDGE**

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**OPINION BY: LEWIS, V.P.J.**

JOHNSON, A., P.J.: Concurs  
LUMPKIN, J.: Concurs  
JOHNSON, C., J.: Not Participating  
SMITH, J.: Concurs

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