

discretion concluding Appellant should be sentenced as an adult, the order of the District Court granting the State's motion to sentence Appellant as an adult should Appellant be convicted is reversed and remanded for sentencing as a Youthful Offender if Appellant is convicted of the charged crimes.¹

DECISION

The order of the District Court of Oklahoma County granting the State's motion to sentence Appellant as an adult if convicted is **REVERSED**. The matter is **REMANDED** for further proceedings with Appellant being sentenced as a Youthful Offender should he be convicted of the charged crimes. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY THE HONORABLE STEPHEN P. ALCORN, SPECIAL JUDGE

¹ The dissenting judges complain that the majority "without discussion or reason" orders that C.C.S. be sentenced as a youthful offender. To the contrary, the majority as set forth above, specifically concludes that the trial court abused its discretion in ordering that C.C.S. be sentenced as an adult. The dissent also complains that the majority provides "no guidance" about how its directive is to be carried out since C.C.S. is almost 18 ½ years of age. Again, to the contrary, the majority specifically directs that C.C.S., should he be convicted, is to be sentenced as a youthful offender. The youthful offender statutes clearly set forth the procedures for sentencing C.C.S. Indeed, rather than applying the statute as written, it is the dissenters who would substitute their own judgment as to what ought to be done with a person who is age 17 at the time of the offense, but will be over 18 ½ years by the time of his trial. It is the business of the courts to apply the law as written. We cannot, and should not rewrite the statute, as would the dissenters, to effectively exclude 17 year olds from youthful offender status when the legislature has specifically directed that "no older youth should be deemed ineligible based upon the youth's age being seventeen (17) years." 10 O.S. § 7306-2 7(a).

APPEARANCES AT TRIAL

ROBERT J. MILDFELT
First Assistant Public Defender
Oklahoma County Public Defender's
Office
5905 North Classen Court, Suite 204
Oklahoma City, Oklahoma 73118
COUNSEL FOR APPELLANT

JENNIFER E. CHANCE
Assistant District Attorney
PAIGE PALMER
Assistant District Attorney
District No. 7 (Oklahoma County)
320 Robert S. Kerr, Suite 505
Oklahoma City, Oklahoma 73102
COUNSEL FOR THE STATE

OPINION BY: CHAPEL, J.

JOHNSON, C., P.J.:
JOHNSON, A., V.P.J.
LUMPKIN, P.J.
LEWIS, J.

CONCUR
DISSENT
DISSENT
SPECIALLY CONCUR

RC

APPEARANCES ON APPEAL

ROBERT J. MILDFELT
First Assistant Public Defender
Oklahoma County Public Defender's
Office
5905 North Classen Court, Suite 204
Oklahoma City, Oklahoma 73118
COUNSEL FOR APPELLANT

JENNIFER E. CHANCE
Assistant District Attorney
PAIGE PALMER
Assistant District Attorney
District No. 7 (Oklahoma County)
320 Robert S. Kerr, Suite 505
Oklahoma City, Oklahoma 73102
COUNSEL FOR THE STATE

A. JOHNSON, VICE PRESIDING JUDGE, DISSENTING:

I dissent. I can find no abuse of discretion in the trial court's decision here. Indeed, the judge made a very sound record in support of his findings of fact and conclusions of law. And the judge went beyond the necessary findings in putting on the record his clear and thoughtful analysis of what legally available option would best serve the interests of C.C.S., an easily influenced eighteen-year-old male charged with armed robbery by use of a handgun – an 85% crime. The judge concludes his analysis of the best solution for C.C.S. by saying, "I think the best thing for him is RID, an opportunity to get a deferred sentence if he successfully completes RID and changes his life." (Tr. Certification Proceedings, January 23, 2009, pp.31-32). The Judge goes further, "I am going to make note of my recommendation, and I would ask, as a favor from the DA, the DA also make note of that for the prosecutor that is going to be taking the case over when it gets transferred." (*Id.*, p. 32).

The majority opinion substitutes its own judgment, without discussion or reason, and orders the lower court to sentence C.C.S. as youthful offender if he is convicted as charged. The opinion provides, however, no guidance about how that directive is to be carried out in light of the fact that C.C.S. is eighteen years and almost five months old at the time of this writing (his eighteenth birthday was December 28, 2008), and the operative statute limits treatment under the jurisdiction of the Office of Juvenile Affairs to offenders under the age of eighteen years five months. See 10 O.S.Supp.2008, § 7306-2.9 (B)(1)(a), (B)(3), and (B)(5).

I am authorized to state that Judge Lumpkin joins this dissent.

LEWIS, SPECIALLY CONCURS:

The principal inquiry in this type of Youthful Offender proceeding, where the State seeks imposition of an adult sentence, is whether the State can show, by clear and convincing evidence, "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." 10 O.S.Supp.2008, § 7306-2.8(D). Applying the statutory factors set forth at 10 O.S.Supp.2008, § 7306-2.8(C)(1)(a-g), the facts here show that Appellant was a qualified candidate for treatment as a youthful offender.

It is the clear intention of the Legislature that otherwise qualified offenders who were seventeen (17) years old when the crime was committed be afforded an opportunity for rehabilitation. 10 O.S.Supp.2008, § 7306-2.7a. The realities of this case show how the absolute cut-off age for youthful offender treatment, at age eighteen (18) years, five (5) months, actually defeats the intention to extend treatment efforts to offenders who are seventeen years old when the crime is committed. 10 O.S.Supp.2008, § 7306-2.9(B)(1)(a). Appellant was seventeen when the crime was committed, but attained the age of eighteen *during the legal process in which his Youthful Offender status was being determined*. Indeed, when this appeal has been decided, the case will return to District Court for a determination of whether Appellant is even guilty of the charged offense. Without some judicial remedy, the happenstance of

Appellant's advancing age will have deprived him in the meanwhile of any opportunity for treatment as a youthful offender.

While there is certainly *some* cause to believe Appellant would not complete *some* plan of rehabilitation, that is not the statutory standard the District Courts are to apply. When an Appellant attains the age of eighteen (18) *while proceedings to determine his youthful offender status are pending*, this fact does not give the District Court a "good cause" to believe he will not "reasonably complete" a plan of rehabilitation if certified as a youthful offender. The length of available rehabilitative programs seems to range from fifteen months to two years; but when otherwise qualified offenders are denied rehabilitative treatment solely because they are approaching the cut-off age of eighteen (18) years, five (5) months, the current implementation of the statute seems to frustrate, and conflict with, its underlying purpose.

When the State files a motion to impose an adult sentence on a person charged as a youthful offender, this Court should by judicial rule extend the allowable treatment program time for a period of not less than eighteen (18), nor more than twenty-four (24) months, from the date on which the youthful offender is found guilty of the charged offense(s), or enters a plea of guilty or *nolo contendere* in District Court. In connection with any motion by the State to impose an adult sentence, the District Court could then consider this extended period of available treatment time in determining whether 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." Expanding the treatment program time to a period which runs from the time guilt is determined will also remediate the current passage of time caused by appellate proceedings to review the District Court's ruling on the motion to impose adult sentence. In this way, the Legislature's intent to provide otherwise qualified seventeen year-old offenders with a meaningful period of rehabilitative treatment would not be compromised or defeated by the very proceedings in which we determine whether defendant should be sentenced as a youthful offender.

I therefore concur in the Court's order and would remand this case with instructions to provide for a youthful offender treatment program of eighteen to twenty-four months from the date on which Appellant is found guilty of the charges by verdict or plea.