

JUN 23 2004

MICHAEL S. RICHIE
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

D. H. D.,)	
)	
Appellant,)	
)	
-vs-)	No. J-2004-305
)	
STATE OF OKLAHOMA,)	
)	
Appellee.)	

ACCELERATED DOCKET ORDER

The Appellant, D. H. D., has appealed to this Court from an order entered by the Honorable Darrell G. Shepherd, Associate District Judge, denying Appellant's motion for certification as a youthful offender or juvenile in Case No. CF-2003-395 in the District Court of Wagoner County. In that case, Appellant was charged as an adult with the offense of Murder in the First Degree. The crime allegedly occurred on or about December 8, 2003, when Appellant (d.o.b 6/19/88) was fifteen (15) years, six (6) months old. On March 10 and 11, 2004, the hearing on Appellant's motion for certification as a youthful offender or juvenile was held in conjunction with the preliminary hearing. After hearing the evidence and arguments, Judge Shepherd denied Appellant's motion for certification as a youthful offender or juvenile.

Appellant brings this appeal asserting two (2) propositions of error. He first claims the District Court abused its discretion in denying D.H.D.'s motion

for certification as a juvenile or youthful offender where D.H.D. met the guidelines set out in the Youthful Offender Act and the State presented no evidence to show that D.H.D. should be certified as an adult. The second proposition contends the District Court abused its discretion in denying D.H.D.'s motion for certification as a juvenile or youthful offender where D.H.D. met the purposes and policies behind the Youthful Offender Act.

This appeal was automatically assigned to the Accelerated Docket of this Court pursuant to Rule 11.2(A)(1) of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2004). The propositions or issues were presented to this Court in oral argument on June 17, 2004, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted four to zero (4-0) to affirm the District Court's order denying Appellant's motion for certification as a juvenile, but to reverse the District Court's order denying Appellant's motion for certification as a youthful offender.

This Court finds Appellant met his burden to overcome the presumption he should be treated as an adult, and to prove he should be certified as a youthful offender. *C.L.F. v. State*, 1999 OK CR 12, ¶4, 989 P.2d 945, 946. At the hearing on the motion for certification as a youthful offender or juvenile, Appellant presented reports and the testimony of four (4) witnesses, including the testimony of Dr. Kurtis Todd Grundy, a licensed psychologist. All of the witnesses and the evidence recommended that Appellant be treated as a youthful offender. Dr. Grundy testified that the capacity for safe treatment of Appellant within the youthful offender system appears to be present; that there

is a reasonable likelihood of rehabilitation of Appellant within the youthful offender system; and that youthful offender status would be more appropriate for Appellant's treatment. Dr. Grundy acknowledged Appellant might be developing schizophrenia, which must be managed and treated for the rest of Appellant's life. But, Dr. Grundy testified medications are very effective in treating schizophrenia, and schizophrenia would not necessarily change Appellant's amenability to treatment in the youthful offender system. After Appellant presented his evidence in support of the motion for certification as a youthful offender and rested, the State announced "our witness is Doctor Kurt Grundy, who has already testified" and "we have nothing further in additional evidence."

In reverse certification cases, this Court will review for an abuse of discretion by the trial judge. *C.L.F.*, 1999 OK CR 12 at ¶5, 989 P.2d at 946. The decision must be determined by the evidence presented on the record, and a decision is an abuse of discretion if it is clearly against the logic and effect of the facts presented in support of and against the motion. *Id.* All of the evidence presented at the hearing on Appellant's motion for certification as a youthful offender, including the State's "witness," indicated Appellant could be treated, and the public protected, if he were processed through the youthful offender system. Based upon such evidence, we find it was an abuse of discretion to deny Appellant's motion for certification as a youthful offender.

IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Wagoner County denying Appellant's motion for certification as

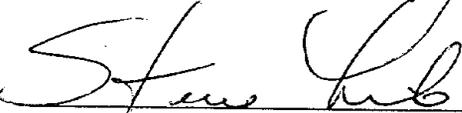
a juvenile in Case No. CF-2003-395 should be, and is hereby, **AFFIRMED**; but the order of the District Court of Wagoner County denying Appellant's motion for certification as a youthful offender in Case No. CF-2003-395 should be, and is hereby, **REVERSED** and **REMANDED** to the District Court to try Appellant as a youthful offender.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 23rd day of June, 2004.



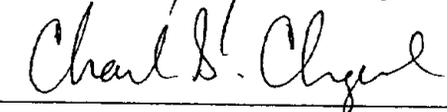
CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge

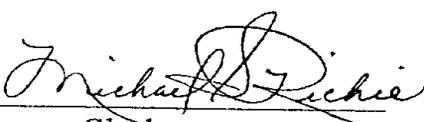


GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge

ATTEST:



Clerk