

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

G.S.,)
)
 Appellant,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. J 2001-878

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB - 8 2002

JAMES W. PATTERSON
CLERK

SUMMARY OPINION

STRUBHAR, JUDGE:

G.S., Appellant, was adjudicated a delinquent child for committing petit larceny in a bench trial in the District Court of Grady County, Case No. JF-2001-53. At a subsequent dispositional hearing, the Honorable Oteka L. Alford, Associate District Judge, placed Appellant in the custody of the Office of Juvenile Affairs and ordered him to pay court costs and attorney's fees. From this adjudication, he appeals.

Appellant raises three propositions of error for review:

- I. The lack of an adequate record for review on appeal means the trial court's adjudication of G.S. as a delinquent must be reversed;
- II. In the alternative, trial counsel's failure to provide a complete record for appellate review denied Appellant his constitutional right to the effective assistance of counsel; and
- III. The lack of a record or any evidence showing Appellant knowingly and voluntarily waived his right to trial by jury violated Appellant's statutory and constitutional rights.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find that reversal is warranted on Proposition III for the reasons set forth below.

When a juvenile has been accused of committing an act which would be a crime if committed by an adult and a hearing of an adjudicatory nature is to be held to determine the merits of the accusation, the state must comply with all statutes pertaining to adjudicatory hearings; this includes the filing of the verified petition, with witnesses endorsed thereon, issuance and service of summons, right to jury trial and use of the rules of evidence and all other applicable provisions of the statutes. *Matter of J. L. M.*, 598 P.2d 243, 246 (Okl.Cr.1979).

Here, there is no record showing Appellant waived his right to jury trial either in writing or in open court. Given the lack of evidence that Appellant waived his right to jury trial, this case must be reversed and remanded. *See Valega v. City of Oklahoma City*, 755 P.2d 118, 119 (Okl.Cr.1988).

DECISION

The Judgment and Sentence of the trial court is **REVERSED and REMANDED for new trial.**

APPEARANCES AT TRIAL

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APPEARANCES ON APPEAL

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SUBMITTED WITHOUT RESPONSE
FROM THE STATE

OPINION BY: STRUBHAR, J.
LUMPKIN, P.J.: DISSENT
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR

RC

LUMPKIN, PRESIDING JUDGE: DISSENTING

Appellant claims there is a lack of record to decide his appeal. And yet, he waived his right to make a record at the adjudication hearing and disposition hearing.

At the adjudication hearing, Appellant stipulated to the State's petition. The trial court and counsel then informed him the stipulation would waive his right to a jury trial, right to cross-examination of witnesses, and right to have the court compel witnesses to appear on Appellant's behalf. Appellant then waived his rights and entered a limited stipulation.

There is no showing Appellant should be relieved from the stipulation he entered before the trial court. I must therefore dissent to the Court's decision.

Trial attorneys may stipulate or submit affidavits regarding what transpired during any portion of a non-transcribed trial proceeding. See Rule 2.2(C), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001). Here, the parties are willing to stipulate to what happened at the hearing. While the State's response brief is untimely, I see no reason why this Court should not, as a matter of judicial economy, supplement the record, *sua sponte*, with the joint stipulation from the prosecutor and defense counsel, pursuant to Rule 3.11(A) and 2.2(C) *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001), thereby resolving the issues raised on appeal.