

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

J.C.T.,)
)
 Appellant,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. J-2013-87

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
NOV 22 2013

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

A. JOHNSON, JUDGE:

On May 24, 2011, Appellant J.C.T. was charged as a Youthful Offender with one count of Robbery With a Weapon in Cleveland County District Court Case No. CF-2011-763.¹ On August 5, 2011, J.C.T., represented by counsel, entered a guilty plea to the charge. Upon agreement of the parties, the District Court of Cleveland County, the Honorable Tracy Schumacher, District Judge, sentenced him as a youthful offender to twelve (12) years imprisonment, all suspended.

On January 11, 2013, a hearing was held on the State's motion to bridge which was filed December 14, 2012. The State alleged J.C.T. had seriously injured or endangered the life or health of another by violent behavior and that

¹ J.C.T. was 16 years, 10 months and 1 day old at the time the offense was committed.

he committed a felony offense while in the custody or under the supervision of O.J.A.²

At the conclusion of the hearing, the district court ordered both parties to submit findings of fact and conclusions of law. On January 25, 2013, the hearing concluded at which time the court granted the State's motion to bridge J.C.T. to D.O.C., and sentenced J.C.T. to twelve (12) years in D.O.C. custody.

Pursuant to Rule 7.1(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2013), J.C.T. appeals from the district court's order bridging him to D.O.C. raising four issues:

- (1) the trial court abused its discretion by sentencing J.C.T. to twelve (12) years incarceration instead of sentencing him to twelve (12) years suspended;
- (2) Alternatively, the trial court abused its discretion by bridging J.C.T. to the Department of Corrections to serve his sentence with no time suspended;
- (3) the trial court's failure to grant J.C.T. credit for time served constitutes plain error requiring modification of J.C.T.'s sentence; and
- (4) the appellate record does not reflect that the trial court has provided a memorandum of historical statement to D.O.C. as required by the Youthful Offender Act.

Under Rule 11.2(A)(1) of this Court's rules, this appeal was automatically assigned to the Court's Accelerated Docket. The Court heard oral argument on May 2, 2013 and took the matter under advisement to consider the validity of the

² The offense, a drive-by shooting, occurred on November 16, 2012. During a traffic stop, police discovered a handgun in J.C.T.'s vehicle and arrested him. J.C.T. admitted purchasing the gun, but denied any involvement in the drive-by shooting. J.C.T.'s home was searched and another firearm was located in his bedroom, hidden between the mattress and box spring. J.C.T. is currently incarcerated in the Oklahoma County jail awaiting trial on the charges filed in Oklahoma County Case No. CF-2012-7545.

bridging order and the issues related to the appeal of a bridging order. The District Court's decision to bridge J.C.T. to the D.O.C. is **AFFIRMED**. This matter is **REMANDED** to the District Court of Cleveland County, the Honorable Tracy Schumacher, with instructions to sentence J.C.T. as specified in his plea agreement (12 years, suspended) and to grant him credit for time served.

1. Validity of Decision to Bridge

J.C.T. argues the trial court abused its discretion in bridging him to D.O.C. custody. "[A]buse of discretion" is defined as:

a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application. The trial court's decision must be determined by the evidence presented on the record, just as our review is limited to the record presented.

W.C.P. v. State, 1990 OK CR 24, ¶ 9, 791 P.2d 97, 100 (citations omitted); accord *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946. The District Court may bridge a youthful offender from O.J.A. to D.O.C. only if it finds the State's motion is supported by clear and convincing evidence, establishing that the youthful offender meets one or more of the statutory criteria warranting such a transfer. *Id.*; *B.J.B. v. State*, 2004 OK CR 17, ¶ 6, 88 P.3d 931, 932.

The record in this matter contains more than sufficient evidence to support the court's ruling granting the State's motion to bridge. The State established that J.C.T.'S actions met the statutory criteria warranting his transfer to D.O.C. custody or supervision. *Id.*; *B.J.B. v. State*, 2004 OK CR 17, ¶ 6, 88 P.3d 931, 932. We find no abuse of discretion in the district court's decision to bridge J.C.T. to D.O.C.

2. Validity of Sentence Imposed

The critical question presented in this appeal is whether the district court, upon bridging a youthful offender to D.O.C. custody, is limited to sentencing the offender to the maximum sentence imposed at the youthful offender's original sentencing as defined at 10A O.S.2011, § 2-5-209(B)(1). We find that it is.

a. Facts

On August 18, 2011, J.C.T. entered a guilty plea to the charges alleged in Cleveland County District Court Case No. CF-2011-763. After verifying that J.C.T. understood successful completion of a rehabilitation plan would result in dismissal of all charges, his release from custody, and expungement of his record, the District Court remanded J.C.T. to the custody of the Office of Juvenile Affairs (O.J.A.) to begin his rehabilitation plan. At this same hearing, the court advised J.C.T. that failure to complete his rehabilitation plan would result in the imposition of a sentence of twelve years in the custody of the Department of Corrections (D.O.C.). On May 18, 2012, the district court extended O.J.A.'s custody of J.C.T. until December 16, 2012, when he would reach the age of 18 years and 5 months.³ In November 2012, J.C.T. was placed with his parents, but remained under the supervision of O.J.A.

On December 14, 2012, the State filed a Motion For Youthful Offender Review Hearing and for Transfer of Custody and/or Supervision to the Department of Corrections, pursuant to 10A O.S.2011, § 2-5-210(B)(5), commonly referred to as a "motion to bridge."

³ 10A O.S.2011, § 2-5-209(B)(1)(a). J.C.T. was 18 years, 6 months and 9 days old when the order bridging him to D.O.C. custody was pronounced.

At the time J.C.T.'s original sentence was imposed, the court believed that if J.C.T. was bridged to D.O.C. he would be eligible for a twelve (12) year sentence. The district court fully intended to sentence him to such, and stated as much on the record. The State advised the court that if it sought to bridge J.C.T., it would ask for a twelve (12) year sentence.⁴

On January 11, 2013, the hearing on the State's motion to bridge began. It became clear that the district court was unsure of what sentence it had authority to impose in light of the youthful offender statutory sentencing limitations. At the conclusion of that initial hearing, both parties were ordered to submit findings of fact and conclusions of law, and were directed to appear at a later date when the court would issue its ruling.

⁴ At the plea and sentencing hearing held August 5, 2011, the district court inquired of J.C.T. if he understood that he was being sentenced to "a 12 year suspended sentence, meaning, in essence, 12 years of probation." (Plea Hearing Transcript, August 5, 2011, p. 6, lines 5 - 7.) J.C.T. acknowledged his understanding of this sentence.

The State reminded the court that J.C.T. would be subjected to periodical reviews, and then stated:

"If he successfully completes his placement with the Office of Juvenile Affairs and successfully completes all of his probation requirements with them, then I expect they will request a dismissal and his case would be dismissed pursuant to that statute and eligible for an expungement. However, if he is not in compliance with that, then State would be asking this court to bridge him over as an adult and **sentence him to 12 years in the Department of Corrections.**"

(Plea Hearing Transcript, August 5, 2011, p. 6, lines 22-25, p. 7, lines 1-4.)

The court then stated:

"[Y]our choices are to do well and this can be dismissed or screw up and 12 years in the Department of Corrections."

(Plea Hearing Transcript, August 5, 2011, p. 7, lines 10-12.)

When the parties appeared at the January 25, 2013 hearing, the court inquired of each as to their interpretation of the statute governing imposition of J.C.T.'s sentence. Specifically, the parties were asked if the bridging proceeding was "akin to a motion to revoke where sentencing options are on the table, or is it---it is the original sentence imposed, which was suspended?"

Admitting that it had no authority other than its interpretation of the statute, the State argued that J.C.T. could be sentenced to twelve (12) years in D.O.C. custody. The State claimed that to impose the original suspended sentence seemed "somewhat silly" in light of the gravity of J.C.T.'s offense that led to the State's filing of the motion to bridge. Considering the nature of the offense, the State argued it would be "nonsensical" to find the court was limited to placing J.C.T. on probation. To do so would require the State to wait for him to commit some probationary violation before his suspended sentence could be revoked. The State alleged that the bridging motion was to be treated as a revocation proceeding, arguing that J.C.T.'s violation of the terms and conditions of his probationary placement and supervision made him eligible for all of the sentencing options available to the court, limited only by the twelve (12) year cap of the original sentence.

In contrast, J.C.T. argued that, assuming sufficient evidence existed to bridge him at all, the statute governing imposition of an adult sentence as the result of bridging a youthful offender to D.O.C. custody was clear, limiting the court's authority to imposition of the original sentence, and nothing more. Arguing that the original twelve (12) year suspended sentence was the one the

State sought to have bridged, J.C.T. claimed it was error for the court to impose anything but J.C.T.'s suspended sentence citing 10A O.S.2011, § 2-5-209(B)(2) limiting the court's sentencing authority to the maximum sentence imposed in the original sentence. J.C.T. argued that if the State wished to incarcerate him for the offense charged in Cleveland County Case No. CF-2011-763, it would have to wait until he violated the terms and conditions of his probation and then timely file an application to revoke based upon that violation.

J.C.T. entered into a plea agreement with the State which specified that he would be sentenced, as a youthful offender, to twelve (12) years, suspended. A review of the plea of guilty summary of facts reflects that exact agreement. The plea agreement notations specify that J.C.T. is to be placed in O.J.A. custody and out of home placement, and that periodic review hearings would be conducted pursuant to 10A O.S.2011, § 2-5-210. (Plea of Guilty, Summary of Facts (Youthful Offender), Original Record, p. 35.) The district court's pronouncement from the bench was that J.C.T. was to be sentenced, as a youthful offender, to twelve (12) years, suspended. J.C.T., the State and the district court all agreed that the sentence imposed was the sentence agreed upon by the parties.

b. Analysis

The youthful offender sentencing statutes resemble the statutes governing imposition of suspended or deferred sentences applied to adult offenders. When a youthful offender is found guilty or enters a plea of guilty or *nolo contendere*, O.J.A. conducts a presentence investigation. The court then holds a hearing as specified in 10A O.S.2011, § 2-5-209(A)(2) and imposes a youthful offender

sentence. Title 10A O.S.2011, § 2-5-202 defines the term “sentenced as a youthful offender” to mean the imposition of a court order making disposition of a youthful offender as provided by 10A O.S.2011, § 2-5-209.⁵ This court order “shall constitute an adult criminal sentence if the youthful offender is transferred to the custody or supervision of the Department of Corrections.” 10A O.S.2011, § 2-5-202(A)(2)(emphasis added).⁶

Section 2-5-209(B)(1) provides that the youthful offender shall be subject to the same type of sentencing procedures and duration of sentence as an adult convicted of a felony, including suspension or deferment.⁷ The statute also requires that any sentence imposed on a youthful offender shall be served in the custody or supervision of O.J.A. until (1) the expiration of the sentence, (2) the youthful offender is discharged or (3) the youthful offender reaches the age of 18, whichever occurs first.⁸ Section 2-5-209(B)(2) specifies “The *sentence imposed*

⁵ Title 10A O.S.2011, § 2-5-209, generally, outlines the procedure for sentencing a youthful offender, and the subsequent disposition of that youthful offender upon completing a rehabilitation plan or reaching the age of 18.

⁶ See also 10A O.S.2011, § 2-5-210(C) (“An order transferring custody of a youthful offender to the Department of Corrections shall be deemed an adult conviction”); 10A O.S.2011, § 2-5-204(C) (“When a person is certified to stand trial as an adult or a youthful offender . . . the accused person shall have all of the statutory and constitutional rights and protections of an adult accused of a crime.”).

⁷ Cases involving youthful offenders charged with capital offenses are the exception to this statute.

⁸ The statute goes on to say that if the youthful offender reaches the age of 18 prior to the expiration of his sentence, he shall be returned to the “sentencing court” which shall make one of the following four determinations:

1. Whether the youthful offender shall be returned to O.J.A. to complete a treatment program (not to exceed age 18 years and 5 months);
2. Whether the youthful offender shall be placed in D.O.C. custody;
3. Whether the youthful offender shall be placed on probation with D.O.C.; or

shall not exceed the maximum sentence already imposed in the originating sentence.” (Emphasis added).

When read together, sections 2-5-209(B)(1) and (2) require the sentencing court, upon reviewing the status of a youthful offender who has reached the age of 18 years, to impose an “adult sentence” at that time, unless it discharges the youthful offender from custody or returns him to O.J.A. until the offender reaches the age of 18 years and 5 months. Prior to the youthful offender reaching the age of 18 (or 18 years and 5 months, if custody has been extended) and upon good cause shown by the moving party, the court may conduct a review hearing to decide whether it should bridge (transfer custody or supervision of a youthful offender) the defendant to D.O.C. See 10A O.S.2011, § 2-5-210(B)(5). Upon finding that transfer is warranted, the court is required to issue an order transferring custody, which shall be deemed an adult conviction. 10A O.S.2011, § 2-5-210(C). This bridging order is appealable when entered, and is statutorily required to include the following:

- (1) detailed findings of fact and conclusions of law addressing the grounds alleged in the State’s motion (10A O.S.2011, § 2-5-210(B)(5);
- (2) a judgment and sentence for an adult conviction (10A O.S.2011, § 2-5-210(C)); and
- (3) a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred to D.O.C., including the date of the offense, the

4. Whether the youthful offender shall be discharged from custody.

See 10A O.S.2011, § 2-5-209(B)(1)(a) – (d).

date of the adjudication as a youthful offender, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and **the date of the imposition of the adult sentence**. (10A O.S.2011, § 2-5-210(C)) (emphasis added).

The sentencing statute clearly limits the length of the youthful offender's adult sentence, requiring that it be no longer than the original sentence imposed against the defendant as a youthful offender. 10A O.S.2011, § 2-5-209(B)(2).

We have no published authority governing this aspect of the youthful offender bridging statute. The goal of statutory construction is to discern the intent of the Legislature, which is never presumed to have done a vain and useless act. Elementary rules of statutory interpretation require us to avoid any statutory construction which would render any part of a statute superfluous or useless. *State v. District Court of Oklahoma County*, 2007 OK CR 3, ¶ 17, 154 P.3d 84, 87; *Vilandre v. State*, 2005 OK CR 9, ¶ 5, 113 P.3d 893, 896; *State v. Anderson*, 1998 OK CR 67, ¶ 3, 972 P.2d 32, 33; *Byrd v. Caswell*, 2001 OK CR 29, ¶ 6, 34 P.3d 647, 648-649; *Evans v. Trimble*, 1987 OK CR 257, ¶ 14, 746 P.2d 680, 685. A statute should be given a construction according to the fair import of its words taken in their usual sense, in connection with the context, and with reference to the purpose of the provision. *Anderson*, ¶ 3, 972 P.2d at 33. This Court also considers the "natural or absurd consequences of any particular interpretation" of a statute. *Id.*

The Youthful Offender Act is unique and specific in its application to a very limited subset of offenders who are given special consideration and treatment specifically because they are not adults. The statutory language governing the

imposition of an adult sentence upon bridging a youthful offender to D.O.C. custody is quite clear. We find nothing “nonsensical” in the statutory language which allows the district court, in its discretion, to impose an original sentence in a youthful offender case after determining what sentence best suits the needs of the individual youthful offender and the State. The statute allows the sentencing court a variety of sentencing options, including all of those available for sentencing adult offenders. The statute is specific and unambiguous.

The confusion in this case resulted when the State and the District Court assumed that a motion to bridge under the youthful offender statute was the equivalent of a revocation proceeding in an adult case. The law governing the revocation of a suspended sentence is likewise quite clear. At a hearing where the State seeks revocation of an adult defendant’s suspended sentence, the question is whether the sentence originally imposed should be executed, and the court makes a factual determination as to whether or not the terms of the suspended sentence have been violated. *See, Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The consequence of judicial revocation is to execute a penalty previously imposed by a judgment and sentence. *Id.*; *Tilden v. State*, 2013 OK CR 10, ¶ 3, ___ P.3d ___; *Burnham v. State*, 2002 OK CR 6, fn. 2; 43 P.3d 387, 390; *Degraffenreid v. State*, 1979 OK CR 88, 599 P.2d 1107; *Bishop v. State*, 1979 OK CR 9, ¶ 4, 593 P.2d 505, 507; *Marutzky v. State*, 1973 OK CR 398, ¶ 5, 514 P.2d. 430, 431.

The consequence of bridging a youthful offender to D.O.C. custody is *the actual imposition of an adult sentence*. 10A O.S.2011, § 2-5-210(C).⁹ It is a final order, appealable when entered. *Id.* Until a youthful offender has been bridged, the original sentence imposed is considered an unexecuted youthful offender sentence. Execution of the sentence occurs upon bridging which is the imposition of an adult sentence. If the original youthful offender sentence was suspended, deferred or subject to some other probationary term or condition, the statutory language authorizes the district court to impose an adult sentence no greater than the original youthful offender sentence.

That the judge in this case misunderstood what sentence she was authorized to impose in the event J.C.T. was bridged is apparent. J.C.T.'s behavior, which prompted the motion to bridge, would have constituted sufficient grounds to revoke his suspended sentence had he been previously sentenced as an adult. But he wasn't.

While we understand the district court's confusion, we find no ambiguity in either the statute or the district court's pronouncements which would allow imposition of the twelve (12) year sentence in this case. This Court has held that pronouncements from the bench control over written conflicting orders. *See, LeMay v. Rahhal*, 1996 OK CR 21, ¶¶ 18-21, 917 P.2d 18, p. 22, citing *U.S. v. Villano*, 816 F.2d 1448, 1450-1451 (1987). Petitioner LeMay sought a writ requiring the district court to vacate a sentence it imposed after the court

⁹ 10A O.S.2011, § 2-5-210(C). An order transferring custody of a youthful offender to the Department of Corrections shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered.

determined that its original sentence was in fact not the sentence the court intended to give. In granting LeMay's request for extraordinary relief we found the fact that the sentencing court did not read the plea agreement as closely as it should have or that the court realized that it imposed a sentence it did not intend, did not revest the court with jurisdiction to allow it to impose a new sentence once a sentence had been pronounced from the bench. The court had no authority to resentence LeMay upon discovering that it misunderstood the sentence originally imposed.

In this instance, there is no conflict between the pronouncement of the sentence by the judge and the written order memorializing the same, nor is there a conflict between the original sentence imposed and the plea agreement entered into between the State and J.C.T. The discrepancy occurred in the interpretation of the statute governing the consequences of bridging J.C.T. to D.O.C. custody, specifically what sentencing limitations existed in the event the State filed a motion to bridge.

And, unlike the *Lemay* case, there was no confusion as to the agreed upon sentence assessed in J.C.T.'s case. At the time the district judge sentenced J.C.T. the intent was to sentence him to twelve (12) years in the event the State filed and successfully presented a motion to bridge. It is equally apparent that only after the State filed its motion to bridge did the district court become concerned that its understanding of the consequences of bridging might not have

been as originally thought.¹⁰ It appears that after reading the bridging statute and the statutory sentencing limitations the district court became concerned that its original assessment of what adult sentence it was allowed to impose was limited to the original sentence assessed against J.C.T. as a youthful offender, in this case, twelve (12) years suspended.

Despite what the State thought this agreement meant, or how the court assumed the agreement would be interpreted and enforced in the event the State filed a motion to bridge, J.C.T. argues he understood the agreement to mean if he was bridged then he would be sentenced to what he agreed to: twelve (12) years, all suspended. That is exactly how the statute reads.

DECISION

The order of the District Court of Cleveland County granting the State's motion to bridge J.C.T. to the Department of Corrections in Case No. CF-2011-365 is **AFFIRMED**. This matter is **REMANDED** to the District Court of Cleveland County for sentencing proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

¹⁰ The State at the Accelerated Docket hearing conducted in this matter, advised this Court that youthful offenders, at least in Cleveland County, are no longer assessed suspended sentences at their original youthful offender sentencing hearings.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE TRACY SCHUMACHER, DISTRICT JUDGE**

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OPINION BY: A. JOHNSON, J.:

LEWIS, P.J.: Concur in Part and Dissent in Part
SMITH, V.P.J.: Concur
LUMPKIN, J.: Dissent
C. JOHNSON, J.: Concur

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LEWIS, P.J., CONCURRING IN PART AND DISSENTING IN PART.

I concur in affirming the district court's order bridging Appellant to a twelve year adult sentence of imprisonment, and dissent to the Court's order directing the imposition of a suspended sentence. Appellant was effectively serving a twelve year sentence, suspended per the trial court's original order, as a youthful offender. 10A O.S.2011, § 2-5-209(B)(1) (youthful offender sentence subject to same procedures and duration, including suspension, as adult sentence for felony, except sentence shall be served in OJA custody or supervision until expiration, discharge, or 18 years of age, whichever comes first). The State timely moved to review his status, alleging his commission of a new felony while under OJA supervision, as authorized by 10A O.S.2011, § 2-5-210(B).

The trial court's powers in disposing of a motion to review the youthful offender sentence filed pursuant to section 2-5-210(B) include (1) discharge without a judgment of guilt; (2) revocation of probation and placement in OJA custody, (3) supervised probation by an agency, (4) placement in a sanction program, or (5) transfer to custody or supervision of the Department of Corrections. § 2-5-210(B)(1-5). Transfer to the Department of Corrections is authorized upon clear and convincing evidence that the youthful offender "committed a felony crime while in the custody or under the supervision of the Office of Juvenile Affairs."

I see no violation of section 2-5-209(B)(2)'s "no greater sentence" rule in the trial court's decision to sentence Appellant to twelve years in prison. This

potential consequence of Appellant's violation of his probation was as crystal clear from the record as the original agreement that he receive a suspended sentence. Appellant clearly violated the terms of that agreement when he committed a new felony and subjected himself to the bridging powers of the trial court set forth in section 2-5-210(B). As the trial court had warned Appellant, "Your choices are to do well and this can be dismissed or screw up and 12 years in the Department of Corrections." The trial court's judgment bridging Appellant to an adult sentence of twelve years imprisonment was expressly contemplated by the language of section 2-5-210(B) and was not error.

LUMPKIN, JUDGE: DISSENTING

I dissent to the decision to remand this case for resentencing.

Initially, I agree with the conclusion that the trial court's oral pronouncement of the sentence as reflected in the official court transcript controls over any subsequent written statement of the sentence imposed. Here, the transcript reflects that the trial judge announced from the bench that J.C.T. was to be sentenced as a youthful offender to the 12 years, suspended.

However, the actual sentence imposed in this case was 12 years, not 12 years suspended. The order suspending J.C.T.'s service of those years behind bars was a separate order, distinct and severable from the term of years imposed. See *Bumpus v. State*, 1996 OK CR 52, ¶ 5, 925 P.2d 1208, 1209-1210 (order suspending defendant's sentence was voidable, subject to being set aside upon proof that the District Court was without statutory authority to enter an order of suspension); *Davis v. State*, 1993 OK CR 3, ¶ 11, 845 P.2d 194, 197 (portion of the judgment and sentence which suspended the execution of the sentence was void as District Court was without authority to suspend the sentence). Therefore, when the trial court sentenced J.C.T. as an adult to 12 years in DOC custody, the prohibition in 10A O.S.2011, § 2-5-209(B)(2) that "the sentence imposed shall not exceed the maximum sentence already imposed in the originating sentence" was not violated.

It is not necessary to analogize the situation in this case to a revocation proceeding. The case can be resolved under the language of the statute. Under

10A O.S.2011, § 2-5-209(B) if an individual sentenced as a youthful offender attains eighteen (18) years of age prior to the expiration of the sentence, such individual shall be returned to the sentencing court and at that time, the sentencing court shall choose between 4 options regarding how the youthful offender is to serve his sentence: 1) with the Office of Juvenile Affairs to complete a treatment program, provided that the treatment program shall not exceed the youthful offender's attainment of eighteen (18) years of age and five (5) months; **or** 2) placement in the custody of the Department of Corrections; **or** 3) probation with the Department of Corrections; **or** 4) discharge from custody. These options take precedence over the severable suspension order.

In this case, the trial judge chose to place J.C.T. in DOC custody for 12 years. The decision to suspend the youthful offender, in accordance with a treatment plan, does not limit the options available to a judge at the time of the review hearing when the youthful offender reaches the age of eighteen (18) years, five (5) months. The statutory language clearly reveals that fact. Under 10A O.S.2011, § 2-5-210(D) he will receive time-served credits against his adult sentence. I find the trial court did not abuse its discretion in this case and would affirm the decision of the District Court.