

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

APR - 5 2018

J. M. F.,

Petitioner,

v.

No. MA 2018-0296

THE STATE OF OKLAHOMA, EX REL.,  
OKLAHOMA COUNTY DISTRICT COURT,

Respondent.

**ORDER GRANTING EXTRAORDINARY RELIEF AND  
REMANDING MATTER TO DISTRICT COURT**

On March 26, 2018, Petitioner, by and through appointed counsel Cindy Brown Danner, filed a petition for a writ of mandamus in Oklahoma County District Court Case No. JDL-2017-1. Petitioner was adjudicated a delinquent child on December 7, 2017, following a trial by jury for Lewd Acts with a Child. Petitioner's birthdate is not included within the record before this Court; however, the record reflects that Petitioner was between the ages of 12 and 13 years of age at the time of the alleged acts. Petitioner did not timely appeal the adjudication, but was granted an appeal out of time by this Court on March 9, 2018, Case No. PC 2018-0201. On March 16, 2018, the Honorable Cassandra M. Williams, Special Judge, found Petitioner indigent for purposes of any filing fees and appointment of attorney only, but found Petitioner still responsible for the cost of the transcripts.

Petitioner seeks a writ of mandamus directing the District Court of Oklahoma County to issue an order directing preparation of the designated appellate record, including transcripts at public expense. Appellate counsel states

that it is without question that the juvenile adjudicated delinquent in this case is personally indigent. Citing *Spain v. Jennings*, 1993 OK CR 36, 882 P.2d 79, appellate counsel argues that Petitioner, who is indigent, is entitled to transcripts at public expense even though his parents retained counsel at trial. Counsel states that the record, including the pauper's affidavit of the child's mother and the affidavit of retained trial counsel, further establish that the transcripts necessary to appeal cannot be paid by other sources, especially in advance of the accelerated time frames required by this Court in juvenile appeals.

In an Order issued March 28, 2018, Judge Williams, or her designated representative, was directed to file a response to Petitioner's application for extraordinary relief. The response was filed in this Court on April 2, 2018. Judge Williams again concluded that J.M.F.'s mother is not indigent for purposes of the trial transcripts.

For a writ of mandamus, Petitioner has the burden of establishing that (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018). We find Petitioner has met this burden. Petitioner, as a 13 or 14 year old minor child, has been found to be personally indigent. The Oklahoma Indigent Defense System (OIDS) has been appointed to represent Petitioner on appeal. As Petitioner is personally indigent and OIDS has been appointed to represent him, he is entitled to receive transcripts at public expense. See *Spain v. Jennings*, 1993 OK CR 36, ¶ 14, 882 P.2d 79. If

the court finds that the child's parents are able to pay all or part of the costs of the transcripts, as it has in this case, then the trial court may order the person or persons responsible to pay the same and prescribe the method of payment to reimburse the court fund. 10A O.S. § 2-2-703. See also 10A O.S. § 2-2-301(C), 19 O.S. § 138.10.

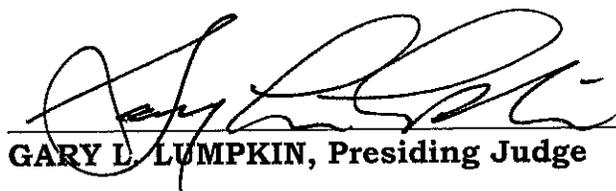
Accordingly, Petitioner's application for a writ of mandamus is **GRANTED** and the matter is **REMANDED** to the District Court. The District Court is directed to issue an order granting all properly designated transcripts at public expense. The appeal record is due to be filed in this appeal on or before April 18, 2018. Oral Argument has been scheduled before this Court *en banc* on June 21, 2018. Juvenile proceedings are *sui generis* and time is of the essence. The parties are instructed to strictly adhere to the Scheduling Order issued by this Court on March 27, 2018.

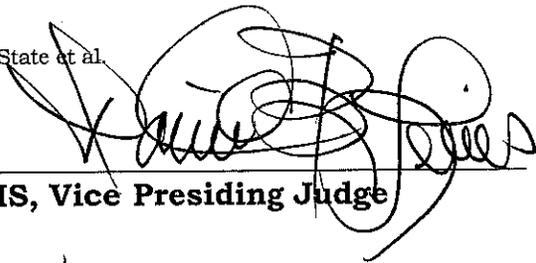
The Clerk of this Court is directed to transmit a copy of this Order to the Honorable Cassandra Williams, Special Judge, the Court Reporter, and the District Court Clerk, as well as the parties.

**IT IS SO ORDERED.**

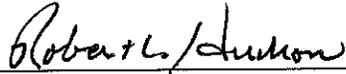
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 5<sup>th</sup>

day of April, 2018.

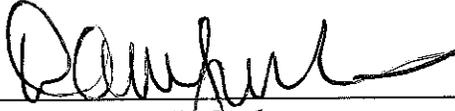
  
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**GARY L. LUMPKIN, Presiding Judge**



**DAVID B. LEWIS, Vice Presiding Judge**



**ROBERT L. HUDSON, Judge**

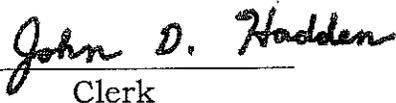


**DANA KUEHN, Judge**



**SCOTT ROWLAND, Judge**

ATTEST:

  
Clerk

NF