

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

K.T.L.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

)
) **NOT FOR PUBLICATION**

) Case No. J-2011-462

)
)
) **FILED**
) **IN COURT OF CRIMINAL APPEALS**
) **STATE OF OKLAHOMA**

)
)
) **SEP 27 2011**

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

PER CURIUM:

Appellant, K.T.L., appeals the order of the Honorable Michael D. Tupper, Cleveland County Special Judge, denying his motion for certification as a juvenile in Cleveland County District Court Case No. CF-2011-351.¹ Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), this appeal was automatically assigned to the Accelerated Docket of this Court.

K.T.L.'s proposition of error was presented to this Court in oral argument on September 8, 2011, pursuant to Rule 11.2(F). At the conclusion of the argument, the parties were advised of the decision of this Court.

The burden to sustain a motion to be remanded to the juvenile system is upon the defendant juvenile. Whether or not the proof is sufficient lies within the discretion of the magistrate, and on appeal will not be disturbed absent an abuse of discretion. *J.D.P. v. State*, 1999 OK CR 5, ¶6, 989 P.2d 948, 949. After a review of the record, we **FIND** the District Court's order denying K.T.L.'s motion

¹ K.T.L. was charged as a Youthful Offender with Robbery by Force/Fear, Count I, and Kidnapping, Count II.

for certification as a juvenile was an abuse of discretion. The finding that a child is not amenable to rehabilitation within the juvenile system is a discretionary decision to be made by the judge, but the decision must be based on substantial evidence against the child's claim to the benefit of juvenile treatment. *M.L.S. v. State*, 1991 OK CR 9, ¶13, 805 P.2d 665, 669. We **FIND** that under the facts of this case, the substantial evidence supported K.T.L.'s motion to be treated as a juvenile.

Decision

IT IS THEREFORE THE ORDER OF THIS COURT that the District Court of Cleveland County's order denying the defendant's motion for certification as a juvenile should be **REVERSED** and **REMANDED** with instructions to certify K.T.L. as a juvenile. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE MICHAEL D. TUPPER, SPECIAL JUDGE**

ATTORNEYS AT TRIAL

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ATTORNEY FOR APPELEE

OPINION BY: PER CURIAM

A. JOHNSON, P.J.: CONCURS

LEWIS, V.P.J.: DISSENTS

LUMPKIN, J.: CONCURS

C. JOHNSON, J.: NOT PARTICIPATING

SMITH, J.: CONCURS

LEWIS, JUDGE, DISSENTS:

I find no abuse of discretion by the magistrate. Therefore I would affirm his ruling denying Appellant's motion for certification as a juvenile.