

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

M.D.M.,)
)
Appellant,)
vs.)
)
STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION

No. J-2010-839

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 25 2011

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

A. JOHNSON, PRESIDING JUDGE:

On March 12, 2010, Appellant, M.D.M., was charged as a Youthful Offender with Assault and Battery with a Dangerous Weapon in Muskogee County District Court Case No. CF-YO-2010-2. Appellant was 16 years, 9 months and 23 days old at the time the offense was committed. In an order entered August 30, 2010, filed September 2, 2010, the District Court of Muskogee County, the Honorable Robin Adair, Special Judge, denied M.D.M.'s request for certification as a Juvenile, ordering that he be treated as a Youthful Offender. The written order memorializing the outcome of the hearing, titled "Order Allowing Imposition of Adult Sentence as Youthful Offender," also granted the State's corresponding motion to sentence Appellant as an adult.

From these rulings, M.D.M. appeals.

M.D.M. raised three propositions of error on appeal:

1. The written order allowing imposition of adult sentence as youthful offender must be stricken because it does not reflect the trial court's findings and oral pronouncement;

2. The trial court's denial of M.D.M.'s Motion to Certify as a Juvenile was an abuse of discretion, especially with regard to adequate protection of the public, the reasonable likelihood of Appellant's rehabilitation, and the time required in a treatment program; and

3. If this Court finds that the trial court actually granted the State's Motion to Impose an Adult Sentence, that decision was an abuse of discretion and against the weight of the evidence presented, particularly concerning the reasonable likelihood of M.D.M.'s rehabilitation and simultaneous adequate protection of the public.

Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010) this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions or issues were presented to this Court in oral argument December 09, 2010, pursuant to Rule 11.2(E). At the conclusion of oral argument, the parties were advised of the decision of this Court.

The District Court's order denying Appellant's motion for certification as a juvenile is **AFFIRMED**. At oral argument, the State agreed that the written order purportedly granting the State's motion to sentence M.D.M. as an adult did not properly reflect the trial court's findings and Judge Adair's oral pronouncement at the hearing on the parties' respective motions. This matter is **REMANDED** to the District Court with instructions that M.D.M. be treated as a Youthful Offender.

M.D.M. was charged as a youthful offender. See, 10A O.S.Supp.2010 §§ 2-5-202(A)(1)(b) and 2-5-206(B)(6). He then filed a motion to be certified for treatment as a juvenile. See, 10A O.S.Supp.2010 § 2-5-205. The burden to

sustain the motion to be certified as a juvenile falls upon the accused. *J.D.P. v. State*, 1999 OK CR 5, ¶ 6, 989 P.2d 948, 949. It is not the State's responsibility to show that the defendant is not amenable to treatment as a juvenile. It is the defendant's burden to overcome the presumption that he should be tried as a Youthful Offender by showing that he is amenable to treatment as a Juvenile and should be certified as such.

The question before this Court is whether the trial court abused its discretion in denying Appellant's motion for certification as a juvenile or youthful offender. "[A]buse of discretion" is defined by this Court 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. (citations omitted, emphasis added..) *W.C.P. v. State*, 1990 OK CR 24, ¶ 9, 791 P.2d 97, 100. *See also, C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 70 OBJ 946, 946 (OkI.Cr. 1999).

M.D.M. has not shown that the District Court abused its discretion in denying his Motion for Certification as a Juvenile.

For imposition of an adult sentence, 10A O.S.Supp. §2-5-208.D. requires the District Court to find "by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a Youthful Offender." No such findings were made by the District Court. To the contrary, Judge Adair specifically found that

Appellant could complete a rehabilitation plan and that the public could be adequately protected if he was treated as a Youthful Offender. We find merit in M.D.M.'s claim that the trial court abused its discretion by ordering M.D.M. to be sentenced as an adult. The order of the District Court granting the State's motion to sentence M.D.M. as an adult is **REVERSED** and the matter is **REMANDED** with instructions that M.D.M. be treated as a Youthful Offender if convicted of the charged offense.

DECISION

The order of the District Court of Muskogee County denying Appellant's Motion for Certification as a Juvenile in Muskogee County Case No. CF-YO-2010-2 is **AFFIRMED**. This matter is **REMANDED** to the District Court with instructions to treat Appellant as a Youthful Offender if convicted of the charged offense. The portion of the District Court's written order granting the State's motion to sentence Appellant as an adult is **REVERSED**. 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 delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY
THE HONORABLE ROBIN ADAIR, SPECIAL JUDGE

APPEARANCES AT TRIAL

R. JAY COOK
MUSKOGEE, OKLAHOMA 74401

COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

ANDREAS PITSIRI
OKLAHOMA INDIGENT DEFENSE
SYSTEM
P.O. BOX 926
NORMAN, OK 73070

COUNSEL FOR APPELLANT

NIKKI BAKER
ASSISTANT DISTRICT ATTORNEY
MUSKOGEE COUNTY
220 STATE STREET
MUSKOGEE, OK 74401

COUNSEL FOR THE STATE

OPINION BY: A. JOHNSON, P.J.:

LEWIS, V.P.J.: Concur

LUMPKIN, J.: Concur

C. JOHNSON, J.: Not Participating

SMITH, J.: Concur

OA/F

NIKKI BAKER
ASSISTANT DISTRICT ATTORNEY
MUSKOGEE COUNTY
220 STATE STREET
MUSKOGEE, OK 74401

COUNSEL FOR THE APPELLEE