

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

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

NOT FOR PUBLICATION

No. J-2008-800

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 16 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

On March 26, 2008, Appellee, M.H., was charged as an adult with First Degree Murder in Case No. CF-2008-1336 in the District Court of Tulsa County. Appellee was 14 years, 11 months and 3 days old at the time the offense was committed. On June 3, 2008, M.H. filed an Application For Certification as a Juvenile or Youthful Offender. On June 30, 2008, the State filed a Motion to Sentence Youthful Offender (M.H.) as an Adult. On August 18, 2008, M.H.'s Motion to Certify as a Juvenile was denied, but the District Court of Tulsa County, the Honorable David Youll, Special Judge, certified M.H. to stand trial as a Youthful Offender. From this ruling, Appellant, the State of Oklahoma, appeals.

On appeal the State raised three propositions of error:

1. The Court abused its discretion by not giving the greatest weight to paragraphs 1, 2, and 3 of 10 O.S. § 7306-2.5(E) when considering M.H.'s Motion to Certify as a Youthful Offender;

2. M.H. did not meet her burden of proof by the preponderance of evidence that she was amenable to treatment; and
3. The court abused its discretion by placing the burden on the State to prove by clear and convincing evidence that M.H. would not complete a treatment plan and the public would not be adequately protected.

Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008) 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 4, 2008, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

The District Court's order granting Appellee's request to be certified to stand trial as a Youthful Offender is **AFFIRMED**.

Appellant was properly charged as an adult. 10 O.S.Supp.2007 §7306-2.5(A). Pursuant to 10 O.S.Supp.2006 § 7306-2.6(F). She then filed a motion to be certified for treatment either as a juvenile or a youthful offender. The burden to sustain the motion to be certified as a youthful offender or juvenile falls upon the accused. *J.D.P. v. State*, 1999 OK CR 5, ¶ 6, 989 P.2d 948, 949; 10 O.S.Supp. § 7306-2.6(F)(1)(b). It is not the State's responsibility to show that the defendant is *not* amenable to treatment as a youthful offender or juvenile. It is the defendant's burden to overcome the presumption that she should be tried as an adult by showing that she is amenable to treatment as a either a Youthful Offender or Juvenile and should be certified as such.

The question before this Court is whether or not the trial court abused its discretion in granting Appellee's motion for certification as a 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 (Okla. Cr. 1999). After reviewing the appeal record in this matter, including the psychological evaluations and certification study, the preliminary hearing and certification hearing transcripts, and other documentary evidence presented at trial, we find no abuse of discretion, and affirm the District Court's ruling.

Once the defendant presents evidence sufficient to overcome the presumption that she should be tried as an adult, the burden shifts to the State to rebut the presumption that the defendant should receive treatment as a Youthful Offender. The evidence presented in this case, by the psychological experts for both Appellee and the State, was that Appellee was amenable to treatment in the Youthful Offender System, and that treatment was possible within the time and age limitations present in Appellee's case. Appellee met her burden of proof and the State failed to present any evidence to rebut the presumption that Appellee should be certified to stand trial as a Youthful Offender.

DECISION

The order of the District Court of Tulsa County granting Appellee's Motion for Certification as a Youthful Offender in Case No. CF-2008-1336 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE DAVID YOULL, SPECIAL JUDGE

APPEARANCES AT TRIAL

THOMAS MORTENSEN
JOSEPH NORWOOD
2 WEST 6TH STREET, SUITE 500
TULSA, OK 74114

COUNSEL FOR DEFENDANT

TIM HARRIS
DISTRICT ATTORNEY, TULSA
COUNTY
REBECCA A. MURPHY
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY
500 S. DENVER, SUITE 900
TULSA, OK 74103

COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, J.:
C. JOHNSON, P.J.: CONCUR
A. JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LEWIS, J.: CONCUR

APPEARANCES ON APPEAL

THOMAS MORTENSEN
JOSEPH NORWOOD
2 WEST 6TH STREET, SUITE 500
TULSA, OK 74114

COUNSEL FOR APPELLANT

TIM HARRIS
DISTRICT ATTORNEY, TULSA
COUNTY
REBECCA A. MURPHY
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY
500 S. DENVER, SUITE 900
TULSA, OK 74103

COUNSEL FOR THE APPELLEE

OA/F