IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR - 6 2000
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STATE OF OKLAHOMA

JAMES W. PATTERSON
CLERK

Appellant,

V.

No. J-99-1634

THE STATE OF OKLAHOMA,
Appellee.

## ACCELERATED DOCKET ORDER

Appellant appeals to this Court seeking reversal of the Creek County District Court's order granting the State's Motion for Certification as an Adult in Case No. JF-99-110. On appeal, Appellant raises three propositions of error:

- 1. The juvenile court abused its discretion in finding R.W.P. not amenable to rehabilitation and that the public could not be adequately protected if R.W.P. remained in the juvenile system;
- 2. The order certifying R.W.P. as an adult is void due to lack of service on the parents, guardian or next friend of R.W.P., of the warrant containing the rights of the parents, guardian, or next friend, and a certified copy of the petition, pursuant to 10 O.S.Supp. 1995, § 7303-2.1; and
- 3. R.W.P. received ineffective assistance of counsel due to counsel's failure to object to the lack of service on R.W.P.'s parents and by failing to provide any evidence on R.W.P.'s behalf.

Pursuant to Rule 11.2(A)(1), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (1999), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions of error were presented in oral argument March 30, 2000, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted, five to zero (5-0), to reverse and remand this matter to the District Court for service of proper notice.

Reversal is required due to the State's failure to serve R.W.P.'s father with both a summons containing his and R.W.P.'s rights, and a certified copy of the certification petition. The State admits it failed to formally comply with service of summons on R.W.P.'s father, however, it urges such failure is not fatal because

the father had actual notice of the proceedings and sent his parents in his stead. At oral argument, the State conceded there was no evidence in the record R.W.P.'s father had ever been served notice of the certification proceedings, or served with a summons containing his and R.W.P.'s rights during such certification process. While Barbara Sinclair of the Office of Juvenile Affairs testified she had a telephone conversation with R.W.P.'s father regarding the certification proceedings, there is no evidence she explained the ramifications of the certification process on R.W.P. or explained his rights. (Tr. 38). We find the lack of service on R.W.P.'s father constituted a denial of due process and resulted in a lack of jurisdiction for the trial court to have proceeded in this matter. See M.K. H. V. State, 1997 OK CR 57, ¶ 5, 946 P.2d 677.

IT IS THEREFORE THE ORDER OF THIS COURT, by a vote of 5 - 0, that this matter is **REVERSED** and **REMANDED** to the District Court of Creek County for issuance of proper service and further proceedings consistent with that notice.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this day

of April, 2000.

RETA M. STRUBHAR, Presiding Judge

GARY L. LUMPKIN, Vice Presiding Judge

CHARLES A. JOHNSON, Judge

CHARLES S. CHAPEL, Judge

STEVE LILE, Judge

ATTEST:

Clerk