

SEP - 1 1999

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOSH RANDALL WALL,)

Appellant,)

v.)

THE STATE OF OKLAHOMA)

Appellee.)

NOT FOR PUBLICATION

Case No. F 98-674

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant, Josh Randall Wall, was tried by a jury before the Honorable Doyle Blythe, Associate District Judge, in Pushmataha County District Court, Case No. CF 98-37. Appellant was charged in Counts 1 and 2, with Assault and Battery with a Deadly Weapon, in violation of 21 O.S. 1991, § 652. Jury trial was held on April 23 and 24, 1998. Appellant was found guilty on both counts of the lesser-included offenses of Assault and Battery with a Dangerous Weapon. The jury recommended one-hundred eighty (180) days imprisonment on each count. Judgment and Sentence was imposed on May 28, 1998, and the sentences were ordered to be served consecutively. From the Judgment and Sentences imposed, Appellant perfected this appeal.

Appellant raised two propositions of error:

- I. Mr. Wall's convictions must be reversed and remanded with instructions to dismiss because he was erroneously charged and convicted as an adult, and
- II. Mr. Wall's convictions must be reversed and remanded for a new trial because the jury was not instructed on his theory of defense.

After thorough consideration of the propositions raised and the entire record before us, including the original record, transcripts, and briefs of the parties, we have determined that reversal is required under the law.

The Youthful Offender Act became effective January 1, 1998. *See* 10 O.S.Supp.1997 § 7306-2.1. Under this Act, the Legislature seeks to ensure the safety of the community, while at the same time providing viable methods of rehabilitation for those youths the courts deem amenable to such methods. *See G. G. v. State*, 1999 OK CR 7, -- P.2d --; 10 O.S.Supp.1998, § 7306-2.2(B). Assault and Battery with a Deadly Weapon is a crime specifically enumerated under 10 O.S.Supp.1998, § 7306-2.6, which mandates that any person who is (16) or seventeen (17) years of age who is charged with that crime "shall be held accountable for his acts as a youthful offender."

Here, the State alleged Appellant committed Assault and Battery with a Deadly Weapon on April 4, 1998, after the effective date of the Youthful Offender Act. However, the record reflects the State failed to proceed against Appellant under the mandatory provisions of the Act. The State acknowledges its error.

Therefore, as Appellant's prosecution as an adult for Counts 1 and 2 of CF 98-37 was contrary to the applicable and mandatory provisions of 10 O.S.Supp.1998, §§ 7306-2.2 and 7306-2.6, the convictions must be reversed

and remanded for new trials consistent with the provisions of the Youthful Offender Act.

DECISION

The Judgment and Sentence of the trial court is hereby **REVERSED AND REMANDED FOR NEW TRIAL.**

AN APPEAL FROM THE DISTRICT COURT OF PUSHMATAHA COUNTY
THE HONORABLE DOYLE BLYTHE, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: JOHNSON, J.:
STRUBHAR, P.J.: CONCURS
LUMPKIN, V.P.J.: CONCURS
CHAPEL, J.: RECUSE
LILE, J.: CONCURS

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