

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

**Appellee.**

**No. JS 2017-909**

## SUMMARY OPINION

The State's sole proposition of error on appeal is that the trial court erred in sustaining the motion to certify Appellee as a Youthful Offender because

Appellee failed to produce sufficient evidence to establish he is entitled to Youthful Offender status and sentencing.

At age fourteen years, eight months, Appellee was presumed to be an adult when this crime was committed. See 10A O.S.2011, § 2-5-205(A) (Any person thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree shall be held accountable for the act as if the person were an adult; provided, the person may be certified as a youthful offender or a juvenile as provided by this section.) Appellee was charged as an adult in this matter and subsequently filed a motion for certification as a Youthful Offender.

At the reverse certification hearing, it is Appellee's burden to overcome the presumption and to prove that he should be certified as either a child or as a youthful offender. *C.L.F. v. State*, 1999 OK CR 12, ¶ 4, 989 P.2d 945. Title 10A O.S.2011, § 2-5-205(E), directs that when ruling on a motion for certification as a youthful offender or juvenile, the court shall consider seven guidelines<sup>1</sup> with greatest weight to be given to the first three listed.

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<sup>1</sup> 1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions;

4. The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system;

Absent an abuse of discretion, the judge, as trier of fact, has the discretion and the prerogative to assess the credibility of the witnesses and to weigh and value their testimony and opinions. *R.J.D. v. State*, 1990 OK CR 68, ¶ 16, 799 P.2d 1122. An abuse of discretion has been 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. *A.R.M. v. State*, 2011 OK CR 25, ¶ 7, 279 P.3d 797.

Granting Appellee's motion for certification as a Youthful Offender in this case was an abuse of discretion. Sufficient evidence was not found in this record to support Judge Gore's ruling that priority was given to the first three guidelines. Further, Judge Gore's findings for each criteria in Section 2-5-205(E) do not support her conclusion that Appellee met his burden by a preponderance of the evidence. We find in this record a lack of evidence to support overriding the presumption that Appellee be treated as an adult.

### **DECISION**

The order of the District Court of Craig County granting the motion to certify Appellee as a Youthful Offender is **REVERSED** and **REMANDED** to the District Court for further proceedings consistent with this Order. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18,

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6. The reasonable likelihood of rehabilitation of the accused person if such person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CRAIG COUNTY  
THE HONORABLE REBECCA J. GORE,  
SPECIAL JUDGE**

**APPEARANCES AT TRIAL**

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**OPINION BY: HUDSON, J.**

LUMPKIN, P.J.: CONCUR  
LEWIS, V.P.J.: DISSENT  
KUEHN, J.: CONCUR  
ROWLAND, J.: CONCUR

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**LEWIS, V.P.J, DISSENTING:**

I respectfully dissent to the majority opinion and would affirm the order of the trial court certifying Appellee as a youthful offender.