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

D. J., III,
Appellant,
v.
THE STATE OF OKLAHOMA,
Appellee.)
) NOT FOR PUBLICATION
)
) No. J 2019-0283
)
) APPROVED FOR RELEASE
) TO PUBLIC FILED
)
) IN COURT OF CRIMINAL APPEALS
) STATE OF OKLAHOMA
)

SUMMARY OPINION

JOHN D. HADDEN
CLERK

LEWIS, PRESIDING JUDGE:

Appellant, D. J., III, born November 1, 2000, was charged as an alleged delinquent child with Assault and Battery with a Dangerous Weapon. The State filed a motion to certify Appellant to be tried as an adult on November 9, 2018.

Following a hearing on April 5, 2019, the Honorable Susan K. Johnson, Special Judge, sustained the State's motion for imposition of an adult sentence. Appellant appeals from the order granting the State's motion for imposition of an adult sentence.

Pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), this appeal was automatically assigned to the Accelerated Docket of this Court. Oral argument was held August 1, 2019. Rule 11.2(E). On appeal

Appellant raises the following propositions of error:

1. The State failed to prove its case for certification by clear and convincing evidence under 10A O.S.Supp.2009, § 2-2-403. The decision of the trial court to impose an adult sentence should be reversed as an abuse of discretion.
2. The trial court erred and prejudiced Appellant when it applied the wrong statute to the evidence presented at the certification hearing and the decision to impose an adult sentence on Appellant should be reversed after *de novo* review.

We affirm the order granting imposition of an adult sentence.

In Appellant's first proposition of error, he argues the trial court abused its discretion imposing an adult sentence. Absent an abuse of discretion, the juvenile 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. 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." *R.J.D. v. State*, 1990 OK CR 68, ¶ 16, 799 P.2d 1122, 1125. See *Stevens v. State*, 94 Okl.Cr. 216, 232 P.2d 949, 959 (1951). Judge Johnson concluded Appellant could not reasonably complete a plan of rehabilitation through the juvenile system.

Therefore, she found Appellant is not amenable to treatment and the public would not be adequately protected if Appellant were sentenced as a juvenile. We do not find this conclusion clearly erroneous.

Appellant's final proposition of error claims the trial court erred and prejudiced Appellant by applying the wrong statutory factors. Judge Johnson's Order on State's Motion for Imposition of an Adult Sentence references the correct statute in its Findings of Fact, 10A O.S. § 2-2-403, but then clearly references the wrong statute, 10A O.S. § 2-5-208, in her conclusions. While we find this is error, we also find Appellant was not prejudiced by this error. The required considerations in these statutes are basically the same with the exception that Section 2-5-208 requires the court to weigh the factors.

DECISION

The order of the District Court of Oklahoma County granting the State's motion for imposition of an adult sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA
COUNTY, THE HONORABLE SUSAN K. JOHNSON,
SPECIAL JUDGE**

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OPINION BY: LEWIS P.J.

KUEHN, V.P.J.: Dissent
LUMPKIN, J.: Concur
HUDSON, J: Dissent
ROWLAND, J.: Concur

RA

HUDSON, J., DISSENTING:

This is a hard case because Appellant was nearly eighteen at the time of the charged offense. Under Oklahoma law, juvenile court jurisdiction over an alleged delinquent ends when the juvenile reaches the age of nineteen. Period. 10A O.S.2011, § 2-2-102(B)(2); *T.G.L. v. State*, 2015 OK CR 4, ¶ 7, 344 P.3d 1098, 1099 (“The provisions for juveniles . . . were created for the benefit of children and the opportunities for treatment therein are statutorily limited to those under nineteen years of age.”). This firm statutory cut-off leaves very little sentencing flexibility for juvenile court judges faced with a delinquent who is fully amenable to treatment like Appellant but who arrives in the juvenile justice system already on the doorstep of the age of majority. *See Arganbright v. State*, 2014 OK CR 5, ¶ 29, 328 P.3d 1212, 1219 (recognizing that the age of majority in Oklahoma is set at the age of 18 years by the Constitution and various state statutes).

Both parties in the present case apparently recognized the need to move quickly. The State withdrew its motion for certification as an adult after Dr. Fuchs’s February 1, 2019, report indicated that Appellant was amenable to rehabilitation and had a low risk factor

for violence. The case was then reset for stipulation and sentencing on March 22, 2019. For reasons that are not clear, a plea agreement between the parties involving four days of county jail time for Appellant was not accepted by the magistrate and the State was left with no alternative but to seek adult certification. That led to the ruling by the magistrate now before this Court finding adult certification was the most appropriate option based upon a) the seven months remaining before the court lost personal jurisdiction over Appellant; and b) the apparent difficulty of the Office of Juvenile Affairs (OJA) to do anything for Appellant rehabilitation-wise during such a short time frame.

This is a situation where legislative intervention is necessary if anything is to change for juvenile offenders like Appellant. This case illustrates the need to authorize the juvenile court to retain jurisdiction over a person beyond the age of nineteen. Appellant was charged with assault and battery with a dangerous weapon for his part in a high school hazing ritual perpetrated by Appellant against the victim. The record shows Appellant was part of a group of teenage boys who carried out this crime in the school locker room. There were no permanent physical injuries although the ongoing

psychological impact of the crime is very real and, according to the record, continues to negatively affect the young victim. This is understandable. What is not understandable, however, is the total and complete recalcitrance of the juvenile justice system to do anything towards treatment and rehabilitation of juvenile offenders like Appellant whose almost-adult status nixes any hope for treatment and rehabilitation.

Here, regardless of Appellant's near-adult standing, I find that the magistrate in this case abused her discretion in certifying Appellant as an adult. First, the magistrate abused her discretion by applying the wrong statute in determining whether to certify Appellant as an adult. The magistrate applied 10A O.S. § 2-5-208, the statute governing imposition of adult sentence in youthful offender cases, to the present juvenile case, which all agree is governed by 10A O.S. § 2-2-403. It is true as the majority notes that the factors to be considered are largely similar in both statutes. What differs, however, is the directive in Section 2-5-208 to give "the greatest weight" in the analysis to the first three factors, i.e., whether the offense was committed in an aggressive, violent, premeditated or willful manner; whether the offense was against persons and, if

personal injury resulted, the degree of injury; and the defendant's prior criminal history.

The magistrate emphasized in the closing section of her order an awareness of Section 2-5-208(C)'s requirement to give the greatest weight to these three factors. Order at 9. The factors set forth in Section 2-2-403, by contrast, require only that "greater weight" be given to transferring the accused to the adult criminal justice system for offenses against persons. Cf. 10A O.S.2011, § 2-2-403(A)(2) and 10A O.S.Supp.2018, § 2-5-208(C)(2). In the present case, the magistrate essentially gave double weight to the nature of the crime at issue here by applying the wrong statute.¹ This was clearly an abuse of discretion. *See Harvey v. State*, 1969 OK CR 220, ¶ 9, 458 P.2d 336, 338 ("Abuse of discretion by a trial court is any unreasonable, unconscionable and arbitrary action taken without proper consideration of the facts and law pertaining to the matter submitted.").

The magistrate additionally abused her discretion by discounting Dr. Fuchs's testimony that Appellant could complete

¹ The magistrate found that Appellant had no prior contact with the juvenile justice or criminal justice systems. Order at 6-7.

80% of the treatment goals for rehabilitation within the seven months remaining for juvenile court jurisdiction. *See 10A O.S.2011, § 2-2-403(A)(6)* (requiring court to consider “[t]he likelihood of *reasonable* rehabilitation of the juvenile if the juvenile is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court[.]” (emphasis added). The record makes clear that Appellant is amenable to treatment, is not a threat to the public and at the least OJA could offer counseling services in a community-based setting even though the short time frame for completion was not ideal. Despite Appellant’s age, time had not run out on the juvenile clock.

I therefore dissent from today’s decision affirming the magistrate’s ruling. In so doing, I urge the Legislature to revisit the appropriate cut-off age for juvenile court jurisdiction of juvenile delinquents as discussed above.

I am authorized to state that Vice-Presiding Judge Kuehn joins in this writing.