

MAY 14 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

B. D. S.,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

No. J-2001-80

ACCELERATED DOCKET ORDER

The Appellant, B. D. S., has appealed to this Court from an order issued by the Honorable Charles G. Hill, Special Judge, denying his motion for certification as a youthful offender in Case No. CF-2000-5111 in the District Court of Oklahoma County. In that case, Appellant was charged as an adult with the crime of Murder in the First Degree. On January 4, 2001, the District Court denied Appellant's motion for certification as a youthful offender, and Appellant brings this appeal.

Appellant raises three (3) propositions of error. He first claims the trial court abused its discretion in not certifying him as a youthful offender. The second proposition contends the order denying certification of B. D. S. as a youthful offender is void due to lack of service on the parents, guardian or next friend of B. D. S., of the warrant, containing the rights of the parents, guardian, or next friend, and a certified copy of the information, pursuant to 10 O.S.Supp.2000, § 7306-2.5. The third proposition claims that Appellant received ineffective assistance of counsel by counsel's failure to object to the lack of service on Appellant's parents.

This appeal was automatically assigned to the Accelerated Docket of this

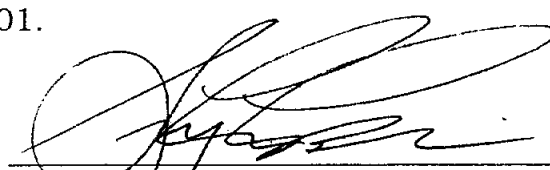
Court pursuant to Rule 11.2(A)(4) of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001). The propositions or issues were presented to this Court in oral argument on April 19, 2001, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted three to two (3-2) to reverse the District Court's order denying Appellant's motion for certification as a youthful offender, and to remand to the District Court to certify Appellant as a youthful offender.

This Court found there is nothing in the District Court record, or in the official appeal record, to indicate that the State complied with basic statutory provisions concerning service on and notice of rights to Appellant's parent, guardian or next friend, and thus that due process was afforded in this case. 10 O.S.Supp.2000, § 7306-2.5(B). This Court also found the District Court's decision was influenced by a lack of funding and a lack of secure facilities and services available in the youthful offender system.

IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Oklahoma County denying Appellant's motion for certification as a youthful offender in Case No. CF-2000-5111 should be, and is hereby, **REVERSED** and **REMANDED** with instructions to certify Appellant as a youthful offender.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 14th day of May, 2001.



GARY L. LUMPKIN, Presiding Judge - Dissents



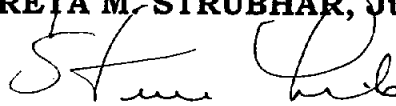
CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

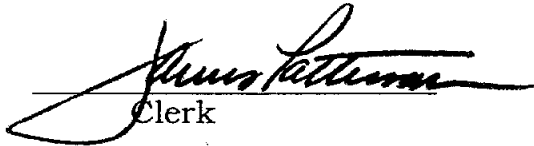


RETA M. STRUBHAR, Judge



STEVE LILE, Judge - Dissents

ATTEST:


Clerk

LUMPKIN, PRESIDING JUDGE: DISSENT

The Honorable Charles G. Hill, Special Judge, properly noted in his decision that, "I don't think that the Court is in a position to take a gamble on the lives of any more of the citizens of Oklahoma County by placing him [Appellant] in a facility where it's very possible that he may be released without being rehabilitated". (Certification hearing transcript Pg. 46). The record in this case is more than sufficient to support his decision in this case.

Appellant was charged as an adult with the crime of Murder, First Degree, in accordance with the Legislative presumption contained in 10 O.S.Supp.2000, § 7306-2.5. It was Appellant's duty to rebut that presumption in order to be certified as a youthful offender in this case. I do not believe the evidence presented is sufficient to meet that burden. Appellant, who was sixteen (16) years and one (1) month old at the time of the crime, in a cold and calculated manner, gunned down an unarmed teenage boy. Prior to the time of this crime, Judge Hill noted Appellant had been charged with a drive-by shooting which occurred just four (4) months prior to this homicide. He correctly decided, based on the evidence presented, that in this case the public needed assurance of protection and the theoretical prospect of rehabilitation was not sufficient to ensure the public it would receive that protection.

The concept of potential for "rehabilitation" is a vaporous speculation. But, we do know we cannot open up cranial cavities of offenders and insert

new brain-housing groups which contain proper value systems and decision-making skills. The theory of attempting to remake people through "rehabilitation" has its place within the criminal justice system. But the first step must be made by the offender. The potential for "rehabilitation" in this case, pursuant to the evidence, is predicated on a substantial number of "ifs" which must fall into place over an extended period of time. This desire for rehabilitation does not appear to come from the offender, but from a desire to force feed him into rehabilitation. Judge Hill knows this offender much better than members of this Court ever will. Judge Hill's decision is well supported by the record. Therefore, the Court cannot, under the law and evidence, say the decision was clearly erroneous. It is this Court's duty then to affirm the decision of the trial court and not merely substitute its own decision for that of the trial judge. I therefore dissent.