

OCT 25 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

S.H.,	)	
	)	
Appellant,	)	
	)	
v.	)	No. J-2005-542 ¹
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

ACCELERATED DOCKET ORDER

Appellant appeals from an order of the Tulsa County District Court, the Honorable Gordon D. McCallister, Jr., District Judge, Case Nos. CF-2004-3089 and CF-2004-3213, finding Appellant should be sentenced as an adult. Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2005), this appeal was automatically assigned to the Accelerated Docket of this Court. Appellant's propositions of error were presented in oral argument on October 6, 2005, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of this Court's decision.

After a review of the record, we find Appellant's second proposition of error has merit. Our review of the record reveals the State failed to present clear and convincing evidence that there is good cause to believe Appellant would not reasonably complete the plan of rehabilitation, or that the public would not be adequately protected if the accused were to be sentenced as a youthful offender. See *G.G. v. State*, 1999 OK CR 7, 989 P.2d 936, 939.

IT IS THEREFORE THE ORDER OF THIS COURT that the order of the

¹ J-2005-542 (CF-2004-3089) and J-2005-543 (CF-2004-3213) were consolidated for purposes of appeal.

District Court of Tulsa County finding Appellant should be sentenced as an adult is **REVERSED**. **IT IS THE FURTHER ORDER OF THIS COURT** that this matter is **REMANDED** to the District Court with instructions that Appellant be sentenced as a youthful offender.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 25th day of October, 2005.



CHARLES S. CHAPEL, Presiding Judge

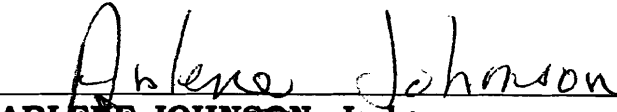
 **DISSENT**

GARY L. LUMPKIN, Vice-Presiding Judge

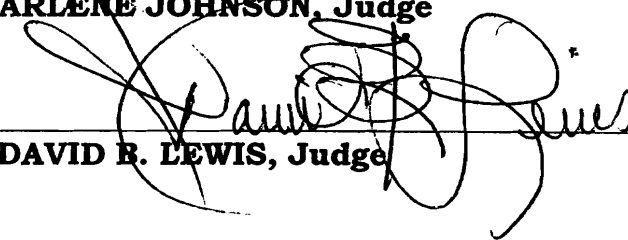
I find no error
The Trial Judge
abused his
discretion in
this case and
there was suffi-
cient evidence to support
his decision.



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk