

FEB - 6 2020

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

JOHN D. HADDEN  
CLERK

C.G.,

) NOT FOR PUBLICATION

Appellant,

) APPROVED FOR RELEASE TO  
PUBLIC

v.

) No. J-2019-620

STATE OF OKLAHOMA,

Appellee.

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

FEB - 6 2020

JOHN D. HADDEN  
CLERK

S U M M A R Y O P I N I O N

LUMPKIN, JUDGE:

On March 28, 2019, Appellant was charged as an adult with Count 1, First Degree Murder and Count 2, First Degree Burglary in Oklahoma County Case No. CF-2019-1347. Appellant was 14 years, 3 months and 4 days old on the date the offense was committed. On April 8, 2019, Appellant filed a Motion For Certification as either a juvenile or youthful offender. A preliminary hearing was conducted June 14, 2019, after which the State filed an amended information additionally charging Appellant with Count 5, Conspiracy to Commit Second Degree Burglary.

A hearing addressing Appellant's certification motion began on July 17, 2019 and concluded on August 16, 2019. At the conclusion of the hearing, the District Court of Oklahoma County, the Honorable Mark C. McCormick, Special Judge, denied Appellant's request for certification as either a juvenile or youthful offender. It is from this ruling that Appellant appeals, raising the following propositions of error:

1. The court abused its discretion by denying C.G.'s motion to be certified as a youthful offender. The felony murder occurred in the course of a botched burglary; the 14-year-old C.G. had no prior record and was a good student; C.G. was amenable to treatment; and the youthful offender system would adequately protect the public;
2. The court plainly erred by admitting a recording of C.G.'s illegal custodial interrogation into evidence against him at the certification hearing;
3. The court violated C.G.'s constitutional rights by admitting his involuntary confession against him at the certification hearing, and the error was not harmless beyond a reasonable doubt;
4. Prosecutorial misconduct violated C.G.'s due process rights; and
5. C.G. was denied effective assistance of counsel, as counsel failed to call a key witness to rebut the State's evidence of C.G.'s poor post-offense attitude.

Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), this appeal was automatically assigned to this Court's Accelerated Docket. The propositions and issues were presented to this Court in oral argument on December 5 2019, pursuant to Rule 11.2(E). At the conclusion of oral argument, the parties were advised of the Court's decision. The District Court's order denying Appellant's motion for certification as either a juvenile or youthful offender is **AFFIRMED**. Appellant's motion for an evidentiary hearing pursuant to this Court's Rule 3.11(B)(3)(b), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), is **DENIED**. Appellant's application to stay proceedings and motion to file additional brief pursuant to Rule 7.7, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), is **DENIED**.

At proposition one, Appellant alleges the trial court abused its discretion in denying his request for certification as either a juvenile or youthful offender. “[A]buse of discretion” is 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. . . . The trial court's decision must be determined by the evidence presented on the record, just as our review is limited to the record presented. (citations omitted).

*W.C.P. v. State*, 1990 OK CR 24, ¶ 9, 791 P.2d 97, 100. After reviewing the appeal record in its entirety, and hearing argument of the parties, we find no abuse of discretion in Judge McCormick's order denying Appellant's motion for certification.

Propositions 2 – 4, addressing evidentiary matters, are not properly presented for consideration in this appeal and are therefore denied. *See J.D.P. v. State*, 1999 OK CR 5, ¶4, 989 P.2d 948 (“Appellant's propositions one and two involve evidentiary matters and are not properly before the Court in this juvenile appeal.”). Similarly, Appellant's ineffective assistance of counsel claim in Proposition 5 is not properly before this Court, nor is his motion filed pursuant to Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019). In essence, he seeks interlocutory review of this claim.

Interlocutory review of an issue does not occur in this Court absent constitutional, statutory, or clear legal precedent authorizing such review. *Smith v. State*, 2013 OK CR 14, ¶ 24, 306 P.3d 557, 567. The right to appeal the trial court's certification decision is granted by statute and contains no provision for interlocutory appeals of ineffective assistance counsel claims during certification proceedings. See 10A O.S.Supp.2018, § 2-5-208 ("An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered."). Cf. *McNeely v. State*, 2018 OK CR 18, ¶ 3, 422 P.3d 1272, 1274 (finding interlocutory appeal of trial court's denial of motion to dismiss based upon the "stand your ground" law was not authorized by the law itself; therefore, trial court's decision on the motion was not appealable prior to trial).

Accordingly, the appeal herein is limited to determination of the issue of whether the trial court's decision denying Appellant's motion for certification as a juvenile or youthful offender was an abuse of discretion. We find the trial court did not abuse its discretion.<sup>1</sup>

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<sup>1</sup> Appellant appends an unpublished decision of this Court, *Loveless v. State*, No. F-1998-0975 (March 23, 2000), to his application to stay

## **DECISION**

The order of the District Court of Oklahoma County denying Appellant's motion for certification as either a juvenile or youthful offender in Oklahoma County Case No. CF-2019-1347 is **AFFIRMED**. Appellant's motion for an evidentiary hearing pursuant to Rule 3.11(B)(3)(b), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), is **DENIED**. Appellant's motion for stay of proceedings and to file additional brief pursuant to Rule 7.7, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF  
OKLAHOMA COUNTY THE HONORABLE MARK  
MCCORMICK, SPECIAL JUDGE

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proceedings and motion to file additional brief. *Loveless* is a direct appeal from a conviction for first degree murder among numerous other crimes, committed when the appellant was sixteen. The appellant properly challenged his pre-trial statements to police in his direct appeal. However, because *Loveless* was a direct appeal and not an interlocutory appeal or an appeal of the trial court's denial of the appellant's motion for certification as a juvenile, it is inapplicable to the present case.

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**OPINION BY: LUMPKIN, J.**

LEWIS, P.J.: Dissent  
KUEHN, V.P.J.: Dissent  
HUDSON, J.: Concurs  
ROWLAND, J.: Concur

OA/F

**LEWIS, PRESIDING JUDGE, DISSENTING:**

This case reveals a glaring defect in youthful offender cases of this nature. The crime, murder in the first degree, for which a juvenile aged thirteen (13) and fourteen (14) is automatically classified as an adult is a heinous crime; therefore, the first two of the three guidelines a trial court must consider and give the greatest weight are already met. *See 10A O.S.Supp.2018, § 2-5-205.* Here, the third guideline, previous history and contacts, is not supported by competent evidence.

The professional evaluators all determined that C.G. would be amenable to treatment, and the trial court agreed. The trial court concluded that C.G. would be amenable to treatment, but also found that the public could not be adequately protected if C.G. were certified as a youthful offender.

The conclusion that the public could not be adequately protected is not supported by the record. I would hold that the trial court abused its discretion in denying C.G. certification as a youthful offender. As a youthful offender, the trial court would still have all of the safeguards at its disposal for the protection of the public

including bridging to the Department of Corrections. See 10A O.S.Supp.2018, § 2-5-210.

Regarding the evidentiary issues raised in this case, I would find that the finding of the trial court is a final order. Evidentiary errors occurring in the hearings leading to this final order should be reviewable under a review for plain error or under ineffective assistance review as I stated in my dissent in *Gordon v. State*, 2019 OK CR 24, 451 P.3d 573.

I, therefore, respectfully dissent. I am authorized to state that Vice Presiding Judge Kuehn joins in this dissent.

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

I agree with the trial court's finding that there was good cause to believe Petitioner could reasonably complete a plan of rehabilitation. Witnesses testified favorably to Petitioner: he was young, amenable to treatment, and could be accommodated in a locked facility. The trial court weighed all the evidence, including the evidence unfavorable to Petitioner, and found Petitioner was amenable to treatment. There was no evidence presented to show, or even suggest, that the public could not be protected if Petitioner was certified as a youthful offender. For these reasons I find it was an abuse of discretion for the trial court to conclude that the public would not adequately be protected if Petitioner is granted youthful offender status.

Given this, I believe it is unnecessary to address the remainder of the propositions. However, I must comment on the Majority's treatment of the issue of illegal interrogation. The Majority states that, not only was this waived, there is no available review for plain error. Of course there is. The Majority suggests this is an interlocutory appeal. It is not. As the Majority admits, the trial court's

decision on whether Petitioner may be tried as an adult is final and, by statute, immediately appealable. 10A O.S.Supp.2018, § 2-5-208(E). There is no other avenue, at the trial court or before this Court, by which Petitioner may challenge this evidence before he actually is tried as an adult – at which point it is too late. If Petitioner does not raise this challenge now, immediately after it is made, he cannot effectively raise it at all, and neither this Court nor the trial court can review it.

In holding otherwise, the Majority is drastically extending the recent discussion of waiver found in *Gordon v. State*, 2019 OK CR 24, 451 P.3d 573. The default in this Court is that we review unpreserved errors at trial, if properly raised on appeal, for plain error. While acknowledging this, *Gordon* found that the lack of challenge to an alleged error in preliminary hearing before arraignment waives all review and there is no review for plain error. *Id.* at ¶ 14, 451 P.3d at 580. This decision was limited to and justified by the very specific interplay between preliminary hearing and arraignment. *Id.* As I describe above, the procedure in youthful offender proceedings is very different. Following *Gordon*, if a defendant fails to preserve a preliminary hearing issue for appeal, he can still (a) raise that issue

in a claim of ineffective assistance of counsel, and (b) more importantly, can still challenge the primary issue – his conviction – on appeal. Under the Majority’s ruling a youthful offender tried as an adult can *never* appeal either the basic decision to try him as an adult, or any evidentiary rulings that formed the basis for that decision, if they were not preserved at the hearing.

The Majority suggests that the decision to try Petitioner as an adult, but not the evidentiary claims, may be appealed. In doing so, the Majority apparently is separating the trial court’s *decision* – to try him as an adult – from *the reasons the trial court made that decision*. The Majority fails to explain this distinction. The record shows that the trial court relied on the evidence at issue – the allegedly illegal interrogation – in reaching its decision. This Court cannot fully analyze the trial court’s decision, to determine whether it was an abuse of discretion, without considering the evidence the trial court used to inform its ruling. I would reach and decide this issue, reviewing it for plain error. However, because Petitioner was amenable to treatment, and for that reason the trial court abused its discretion, I find the other evidentiary issues moot. I dissent.