



STATE v. J.B.

2022 OK CR 18

Case Number: JS-2022-127

Decided: 08/25/2022

THE STATE OF OKLAHOMA, Appellant v. J.B., Appellee



Cite as: 2022 OK CR 18, ___ ___

OPINION

HUDSON, VICE PRESIDING JUDGE:

¶1 Appellee, J.B., was charged pursuant to the Youthful Offender Act¹ with Second Degree Murder, in violation of 21 O.S.2011, § 701.8 (Count 1), and three counts of Assault With a Dangerous Weapon, in violation of 21 O.S.2011, § 652 (Counts 2-4), in Oklahoma County District Court Case No. CF-2021-2922.

¶2 On August 4, 2021, the State filed a Motion for Imposition of an Adult Sentence. The motion was heard and denied on January 31, 2022, by the Honorable Lydia Green, Special Judge, in an order which the State now appeals.

¶3 In seeking reversal of Judge Green's denial of its motion to impose an adult sentence pursuant to 10A O.S.Supp.2018, § 2-5-208(E), the State raises one proposition of error:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE STATE'S MOTION TO IMPOSE ADULT CERTIFICATION AS THE STATE PRESENTED BY CLEAR AND CONVINCING EVIDENCE THAT APPELLEE SHOULD BE SENTENCED AS AN ADULT. THE TRIAL COURT IMPROPERLY WEIGHED THE SEVEN ENUMERATED FACTORS IN SECTION 2-5-208 OF 10A OF THE OKLAHOMA STATUES, OR IN THE ALTERNATIVE, IMPROPERLY CONSIDERED FACTORS OUTSIDE OF THE ENUMERATED ONES IN SECTION 2-5-208 OF TITLE 10A OF THE OKLAHOMA STATUTES.

¶4 Pursuant to Rule 11.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), this appeal was automatically assigned to this Court's accelerated docket and heard in oral argument on May 12, 2022. At the conclusion of that argument, the parties were advised of this Court's decision. The trial court's order denying the State's motion to certify J.B. as eligible to be sentenced as an adult is **REVERSED** and this case is **REMANDED** to the District Court of Oklahoma County.

¶5 On July 6, 2021, Cameron Shores was speaking with his mother, Dalma Shores, and his friend, Adam Rouse, in an apartment complex parking lot when a car driven by Appellee pulled up and Appellee and his passenger got out and began threatening them. Appellee and his passenger, Latrell Davis, exited the vehicle and Appellee began shooting at Mr. Shores and Mr. Rouse.² Appellee chased Mr. Shores and Mr. Rouse and fired at least five shots at them. During the shooting, Mr. Davis was struck by a bullet and died on the ground next to Appellee's car. Appellee admitted to law enforcement that he retrieved Mr. Davis's gun from the car and fired it several times accidentally hitting and killing Mr. Davis.

¶6 A psychologist and a juvenile justice specialist testified at the hearing on the State's motion to impose an adult sentence. They stated that with the treatment resources available it was possible to rehabilitate J.B. but that due to his significant barriers to treatment estimated his amenability to treatment to be fair. According to their testimony, the necessary treatment

program would last approximately twenty-one months. At the time of the hearing before Judge Green, there was approximately seven months available to treat J.B. before he aged out of OJA custody. See 10A O.S.Supp.2021, § 2-5-209.

¶7 Prosecutors who believe that an accused youthful offender "would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence" are required to file a pre-trial motion seeking the imposition of an adult sentence. 10A O.S.Supp.2018, § 2-5-208(A). The trial court is required to hold a hearing and grant the motion if the record and evidence prove "by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender." 10A O.S.Supp.2018, § 2-5-208(D). "Whether or not the proof is sufficient lies within the discretion of the magistrate; and on appeal, the magistrate's ruling will not be disturbed absent an abuse of discretion." *T.G.L. v. State*, 2015 OK CR 4, ¶ 10, 344 P.3d 1098, 1100 (quoting *J.D.P. v. State*, 1999 OK CR 5, ¶ 6, 989 P.2d 948, 949).

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. . . . 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.

A.R.M. v. State, 2011 OK CR 25, ¶ 7, 279 P.3d 797, 799 (quoting *W.C.P. v. State*, 1990 OK CR 24, ¶ 9, 791 P.2d 97, 100); accord *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946.

¶8 In making its determination, the trial court is to consider seven statutory factors enumerated in Section 2-5-208(C)(2), placing the greatest weight upon the first three of these factors, which are:

- a. whether the offense was committed in an aggressive, violent, premeditated or willful manner;
- b. whether the offense was against persons and, if personal injury resulted, the degree of injury;
- c. 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.

Then the trial court is directed to apply the overarching criteria found in Section 2-5-208(D) as follows:

After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

¶9 The evidence before this Court clearly indicates that the State carried its statutory burden and that its motion should have been granted. As required by Section 2-5-208(D), Judge Green specifically determined and included in her order that J.B. "would not reasonably complete a plan of rehabilitation prior to [the trial court] losing jurisdiction." Given the circumstances here, this finding alone entitled the State to have its motion granted. Moreover, the evidence was that without treatment the public would not be adequately protected if J.B. is sentenced as a youthful offender. Despite this, Judge Green ruled erroneously that the public would be adequately protected if J.B. were sentenced as a youthful offender. As a result, the State has established that Judge Green's decision was clearly against the logic and effect of the facts and law presented, and was thus an abuse of discretion. *A.R.M.*, 2011 OK CR 25, ¶ 7, 279 P.3d at 799.

¶10 In this appeal J.B.'s defense of Judge Green's order rests on *K.M.C. v. State*, 2009 OK CR 29, 221 P.3d 735. The custody of a youthful offender can only be maintained by OJA for a certain amount of time before the offender "ages out" of the system. Although the maximum age has been changed by the Legislature over the years, we addressed these "age out provisions" in *K.M.C.*, where we reversed a trial court order granting a motion to impose an adult sentence pursuant to Section 2-5-208. In *K.M.C.* we held that "this Court will not affirm orders granting motions to sentence youthful offenders as adults when the primary evidence and the only reasoning used to support the order is the age of the youthful offender." *K.M.C.*, 2009 OK CR 29, ¶ 7, 221 P.3d at 737.

¶11 The outcome in *K.M.C.* was due, in part, to the Legislature's statement of intent as expressed in the 2009 version of Section 2-5-207:

No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the age of the youth being seventeen (17) years. To deny access to an otherwise eligible older youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.

10A O.S.Supp.2009, § 2-5-207.

¶12 Following *K.M.C.*, Section 2-5-207 was amended by the 2010 Oklahoma Legislature as follows:

It is the intent of the Legislature to fully utilize the Youthful Offender Act as a means to protect the public while rehabilitating and holding youth accountable for serious crimes. The Legislature finds that eligible seventeen-year-olds should have the opportunity to be processed as youthful offenders as provided by law and held accountable through the various provisions of the Youthful Offender Act for custody, institutional placement, supervision, extended jurisdiction within the Office of Juvenile Affairs, and the ability to transfer youthful offenders to the Department of Corrections when incarceration or additional supervision is required beyond the maximum age allowed in the Office of Juvenile Affairs. No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the age of the youth being seventeen (17) years, **but it is the intent of the Legislature that such youthful offender shall not remain in the custody or under the supervision of the Office of Juvenile Affairs beyond the youthful offender's maximum age of eighteen (18) years and five (5) months.** To deny access to an otherwise eligible older youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.

10A O.S.Supp.2010, § 2-5-207 (emphasis added). Following the 2010 amendment, Section 2-5-207 mandated that once a youthful offender reaches the age of eighteen years and five months they are no longer eligible for OJA services.³ The Legislature added this language into the same sentence in Section 2-5-207 that required youthful offenders to be treated the same regardless of age. The Section 2-5-207 statements requiring that youthful offenders be discharged from OJA treatment at eighteen years and five months of age are not inconsistent. Placing them together in the same sentence in Section 2-5-207 makes it clear that the concepts are related and that older youthful offenders are unique. This Court addressed the alleged inconsistency in 10A O.S.Supp.2010, § 2-5-207 as follows in *A.R.M.*:

The Legislature has clearly expressed its intent as set forth at 10A O.S.Supp.2010, § 2--5--207. While 17 year old offenders are eligible for treatment as youthful offenders, the time span for which treatment is available ends at age 18 years and 5 months. The characterization of that limitation as "arbitrary and ridiculous" notwithstanding, the Legislature's intent could not have been more clear. However distasteful the age limitation might be, we find that the intent of the Legislature, and the purpose of the Youthful Offender Act, can be reconciled. We find no violation of due process or equal protection, and therefore determine *A.R.M.*'s first proposition⁴ to be without merit.

A.R.M., 2011 OK CR 25, ¶ 4, 279 P.3d at 799.

¶13 *A.R.M.* was handed down two years after *K.M.C.* and after the Legislature revised its statement of intent. In *A.R.M.*, we affirmed the trial court's grant of a motion to impose an adult sentence based on the defendant's inability to complete treatment. *Id.* Similar to Appellee's case, experts in *A.R.M.* testified he was a good candidate for rehabilitation but they were not sure he could complete the necessary youthful offender rehabilitation based on his limited amount of time remaining in OJA custody. *A.R.M.*, 2011 OK CR 25, ¶ 10, 279 P.3d at 799-800. Like Judge Green, the trial judge in *A.R.M.* weighed evidence as required by Section 2-5-208(D). The trial court in *A.R.M.* decided that despite the testimony that *A.R.M.* would benefit from treatment, "the public could not reasonably be protected if *A.R.M.* was treated as a youthful offender within the time remaining for rehabilitation." *A.R.M.*, 2011 OK CR 25, ¶ 12, 279 P.3d at 800. We affirmed the trial court's decision in *A.R.M.*

¶14 In effect, without mentioning it, *A.R.M.* overruled *K.M.C.* by allowing motions to impose adult sentencing to be based on an inadequate protection of the public because the youthful offender was too old to complete OJA treatment. Following the 2010 amendment to Section 2-5-207 and the above analysis in *A.R.M.*, this Court has repeatedly found that it is relevant

whether a youthful offender can "reasonably complete a plan of rehabilitation" and that this determination has direct if not dispositive impact when determining whether "the public would not be adequately protected if the person were to be sentenced as a youthful offender." 10A O.S.Supp.2018, § 2-5-208(D); *A.R.M.*, 2011 OK CR 25, ¶ 8, 279 P.3d at 799.

¶15 We have followed the reasoning found in *A.R.M.* for over a decade when deciding appeals from trial court decisions on motions to impose adult sentencing. While we cannot consider age alone pursuant to Section 2-5-207, age is a factor in our determinations pursuant to Section 2-5-208 of whether the youthful offender can complete a plan or whether the public is adequately protected. As such, trial courts must consider it as a factor in making such determinations. To the extent *K.M.C.* is inconsistent with this opinion, *K.M.C. v. State*, 2009 OK CR 29, 221 P.3d 735, is overruled.

DECISION

¶16 The trial court's Order Denying the State's Motion for Imposition of an Adult Sentence filed in the trial court on January 31, 2022, is **REVERSED**. This matter is **REMANDED** to the District Court of Oklahoma County with instructions to enter an order granting the State's Motion for Imposition of an Adult Sentence. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, THE HONORABLE LYDIA GREEN, SPECIAL JUDGE

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OPINION BY: HUDSON, V.P.J.

ROWLAND, P.J.: CONCUR
LUMPKIN, J.: SPECIAL CONCUR
LEWIS, J.: CONCUR
MUSSEMAN, J.: CONCUR

LUMPKIN, JUDGE: SPECIAL CONCUR:

¶1 I compliment the Court in its well-reasoned opinion clarifying our past opinions and applying the Legislative intent to this very complicated issue. Overruling *K.M.C. v. State*, 2009 OK CR 29, 221 P.3d 735, further helps to clarify the correct application of the statutory scheme.

¶2 Decisions in relation to the future of a young person are some of the hardest and most agonizing a trial judge is required to make. There is no real assurance that any decision will prove successful when attempting to predict how a particular adolescent will respond to treatment opportunities provided to him/her. However common sense must be a part of the

decision process.

¶3 Regardless of the age set by the Legislature for a young person to "age out" of a program created for treatment there will always be a case where the argument will be presented that a particular youth could receive favorable treatment if just given more time. But, there must always be a cutoff date and that cutoff date must be a part of the calculus a judge applies in deciding if that particular person has the potential to respond to the treatment provided. Psychologists and juvenile case workers can never provide certainty in their recommendations. Psychology is really more of an art form than a science due to the fact that the nature of humanity is complex and is not like a scientific experiment that can be replicated in a laboratory. A human skull can't be opened and a new brain housing inserted to replace the old thought process or values. The hope in treatment plans is that a particular young person will respond to positive influences. For this to occur the person has to want to change. When a judge is confronted with an age issue, as in this case and there is just no time even under the optimal set of circumstances to complete the treatment plan; the judge must apply the law with common sense recognizing the protection of the public must be ensured.

¶4 This opinion will provide judges with the guidance to deal with the realities of the hard choices they must make when presented with older adolescents who present the potential of harm to the public.

FOOTNOTES

HUDSON, VICE PRESIDING JUDGE:

¹ 10A O.S.2011, § 2-1-101.

² The Shores and Rouse are the victims in Counts 2, 3, and 4 respectively.

³ Section 2-5-207 was subsequently amended in 2018 to reflect that OJA jurisdiction could be extended to a maximum of nineteen years of age. See 10A O.S.Supp.2018, §§ 2-5-207, 2-5-209.

⁴ A.R.M.'s Proposition I argued that the age limitation requiring the Office of Juvenile Affairs to relinquish custody of youthful offenders once they reach eighteen years and five months is contrary to the intent and purpose of the Youthful Offender Act.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

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Cite Name

Level

Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1990 OK CR 24</u> , <u>791 P.2d 97</u> ,	<u>W.C.P. v. STATE</u>	Discussed
<u>2009 OK CR 29</u> , <u>221 P.3d 735</u> ,	<u>K.M.C. v. STATE</u>	Discussed at Length
<u>2011 OK CR 25</u> , <u>279 P.3d 797</u> ,	<u>A.R.M. v. STATE</u>	Discussed at Length
<u>2015 OK CR 4</u> , <u>344 P.3d 1098</u> ,	<u>T.G.L. v. STATE</u>	Discussed
<u>1999 OK CR 5</u> , <u>989 P.2d 948</u> , <u>70 OBJ</u> <u>473</u> ,	<u>J.D.P. v. State</u>	Discussed
<u>1999 OK CR 12</u> , <u>989 P.2d 945</u> , <u>70 OBJ</u> <u>946</u> ,	<u>C.L.F. v. State</u>	Discussed

Title 21. Crimes and Punishments

Cite	Name	Level
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Cite Name**Level**21 O.S. 652.Shooting with Intent to Kill - Assault and Battery with Deadly Weapon, etc.

Cited

21 O.S. 701.8.Second Degree Murder

Cited