

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

M.J.B.,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. J-2015-910

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 18 2016

MICHAEL S. RICHIE
CLERK

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

SMITH, PRESIDING JUDGE:

On July 31, 2015, Appellant, M.J.B., was charged as an adult with five counts of First Degree Murder and one count of Assault and Battery with Intent to Kill in Tulsa County Case No. CF-2015-3983.¹ M.J.B. was 16 years, 8 months and 18 days old at the time the offenses were committed. On October 1, 2015, M.J.B. filed a demurrer to the jurisdiction of the court alleging Oklahoma's Youthful Offender statute is unconstitutional. He also filed an application for certification as a juvenile or a youthful offender and a motion to stay proceedings pending resolution of these issues. On October 12, 2015, after a hearing held October 9, 2015, the District Court of Tulsa County, the Honorable Martha Rupp Carter, Special Judge, denied M.J.B.'s claims.

From this ruling M.J.B. appeals raising the following propositions of error:

1. Oklahoma Statute 10A O.S.2011 § 2-5-205(B) creates an unconstitutional irrebuttable classification of adult status from the mere accusation of murder in the first degree; and

¹ These crimes were committed in conjunction with M.J.B.'s brother Robert who was 18 years old at the time of the offenses.

2. Application for certification as a Juvenile or Youthful Offender should be granted as consistent with current intent of the Oklahoma Juvenile Code and recognition of competency issues germane to juveniles.

M.J.B. also requested a stay of proceedings pending resolution of his appeal. Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), this appeal was automatically assigned to this Court's Accelerated Docket. The propositions and issues were presented to this Court in oral argument on January 21, 2016, pursuant to Rule 11.2(E). At the conclusion of oral argument, the parties were advised of the Court's decision.

This Court is bound by the language the Legislature has placed in our statutes defining crimes and fixing the degrees of punishment for those crimes. *Arganbright v. State*, 2014 OK CR 5, ¶ 15, 328 P.3d 1212, 1216; *State v. Young*, 1999 OK CR 14, ¶26, 989 P.2d 949, 955; *Salyers v. State*, 1988 OK CR 88, ¶ 7, 755 P.2d 97, 100; *Hunter v. State*, 1962 OK CR 127, ¶ 20, 375 P.2d 357, 362. The party challenging the constitutionality of a statute has the burden of proving that the statute is unconstitutional. *Arganbright, id.*; *Murphy v. State*, 2012 OK CR 8, ¶ 32, 281 P.3d 1283, 1292; *Romano v. State*, 1993 OK CR 8, ¶ 66, 847 P.2d 368, 384.

Title 10A O.S.2011 2-5-205 reads, in relevant part, as follows:

... B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree *at that time* shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. . . .

The Legislature's intent in the Youthful Offender statute governing 15, 16 and 17 year olds charged with first degree murder is clear: they are to be prosecuted as adults. This exact issue was raised, and rejected, in *M.A.W. v. State*, 2008 OK CR 16, 185 P.3d 388. In *M.A.W.* this Court found that the Legislature's power to define who qualifies as a youthful offender for what offenses, and its decision to exclude certain individuals from youthful offender status, does not offend the Constitution. We also determined that *M.A.W.* was not entitled, simply by virtue of his age, to be considered for youthful offender status. *M.J.B.* presents no new or compelling arguments that would warrant changing this Court's decision in *M.A.W.*

The District Court's order denying *M.J.B.*'s demurrer to the court's jurisdiction based upon the alleged unconstitutionality of 10A O.S.2011 § 2-5-205(B) and the denial of *M.J.B.*'s request to seek certification as a juvenile or youthful offender is **AFFIRMED**.² The stay of proceedings granted by this Court pending resolution of these issues is **LIFTED**.

DECISION

The order of the District Court of Tulsa County denying Appellant's demurrer to the District Court's jurisdiction and the denial of Appellant's request to seek certification as a juvenile or youthful offender in Tulsa County Case No. CF-2015-3983 is **AFFIRMED**. The stay of proceedings granted pending

² We make no finding regarding a similarly situated defendant's right to an amenability hearing should (s)he be bound over or found guilty of a charge other than First Degree murder.

resolution of Appellant's appeal is **LIFTED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE MARTHA RUPP CARTER, SPECIAL JUDGE

APPEARANCES AT TRIAL

ROBERT R. NIGH, JR.
CHIEF PUBLIC DEFENDER
ADAM BARNETT
PAULA ALFRED
ASSISTANT PUBLIC DEFENDERS
423 S. BOULDER AVE., STE. 300
TULSA, OK 74103

COUNSEL FOR DEFENDANT

STEPHEN A. KUNZWEILER
DISTRICT ATTORNEY
SARAH McAMIS
JULIE DOSS
ASST. DISTRICT ATTORNEY
TULSA COUNTY
500 S. DENVER
TULSA, OK 74103

COUNSEL FOR THE STATE

OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR IN RESULT
HUDSON, J.: CONCUR

OA/F

APPEARANCES ON APPEAL

ROBERT R. NIGH, JR.
CHIEF PUBLIC DEFENDER
ADAM BARNETT
PAULA ALFRED
ASSISTANT PUBLIC DEFENDERS
423 S. BOULDER AVE., STE. 300
TULSA, OK 74103

COUNSEL FOR APPELLANT

STEPHEN A. KUNZWEILER
DISTRICT ATTORNEY
DOUGLAS A. WILSON
ASST. DISTRICT ATTORNEYS
TULSA COUNTY
500 S. DENVER, SUITE 900
TULSA, OK 74103

COUNSEL FOR THE APPELLEE