

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

L.D.H.,)
)
 Appellant,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

**NOT FOR PUBLICATION
APPROVED FOR RELEASE
TO THE PUBLIC**

No. J-2017-729

No. J-2017-730

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
NOV 16 2017

SUMMARY OPINION

LEWIS, VICE PRESIDING JUDGE:

Appellant was charged as a Youthful Offender with one count of Lewd Molestation of a Victim Under 12 in Tulsa County District Court Case No. YO-2015-38.¹ Appellant was charged as a Youthful Offender with one count of First Degree Robbery in Tulsa County District Court Case No. YO-2015-44.² On December 17, 2015, Appellant entered pleas of guilty in Case Nos. YO-2015-38 and YO-2015-44. Appellant was sentenced to twenty-five years as a youthful offender in Case No. YO-2015-38 and ten years as a youthful offender in Case No. YO-2015-44 and was remanded to the custody of the Office of Juvenile Affairs (OJA) to begin a rehabilitation plan. On January 4, 2017, OJA's custody of Appellant in both cases was extended until he reached the age of 18 years and 5 months.

¹ Appellant was 16 years, 6 months and 1 day old at the time the offense was committed.

² Appellant was 16 years, 6 months and 16 days old at the time the offense was committed.

On June 12, 2017, the State filed a Motion to Bridge Youthful Offender to Department of Corrections pursuant to 10A O.S.Supp.2012, § 2-5-210 in both cases. The State alleged Appellant had “established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.” Following a hearing on June 29, 2017, the Honorable Kelly Greenough, District Judge, found by clear and convincing evidence that Appellant should be bridged and placed Appellant on a deferred sentence under the supervision of the Oklahoma Department of Corrections for a period of ten years.

Appellant raises an identical single proposition of error in each of these appeals. He contends that these cases should be dismissed and his record expunged. Appellant argues that he has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety.

Pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017) these appeals were automatically assigned to the Accelerated Docket of this Court. The proposition or issue was presented to this Court in oral argument October 5, 2017, pursuant to Rule 11.2(E).³ Rule 11.2, *Rules supra*. At the conclusion of oral argument, this Court voted three to zero to affirm the District Court’s order granting the State’s motion to bridge Appellant from the youthful offender system to the custody of the Department of Corrections.

³ The arguments in these two appeals were combined and presented to this Court as one argument.

The evidence in this case was that Appellant had eighteen minor violations and four major violations while in the OJA program. Judge Greenough agreed with the State and, pursuant to 10A O.S.Supp.2012, § 2-5-210, found that Appellant had established a pattern of disruptive behavior not conducive to the established policies and procedures of the program. This section provides in relevant part:

B. The court shall schedule an annual review hearing in open court for every youthful offender in the custody of the Office of Juvenile Affairs. Such hearing may be scheduled either upon the court's own motion. . . The court, at its discretion, may schedule other review hearings as the court deems necessary, after notice to the parties. . . The court shall hold a review hearing for good cause shown, . . . for the purpose of making a determination to:

....

1. Order the youthful offender discharged from the custody of the Office of Juvenile Affairs without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Oklahoma Statutes and dismiss the charge with prejudice to any further action, if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety.

....

5. Transfer the youthful offender to the custody or supervision of the Department of Corrections if the court finds by clear and convincing evidence that the youthful offender has:

....

f. established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.

See 10A O.S.Supp.2012, § 2-5-210(B)(1) and (5)(f).

The question before this Court is whether or not the trial court abused its discretion in bridging Appellant to the adult system. “[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. See also, *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946.

There was sufficient competent evidence presented for the District Court to find by clear and convincing evidence that Appellant should be bridged from the Youthful Offender System to the Department of Corrections. See 10A O.S.Supp.2012, § 2-5-210. We thus find no abuse of discretion and deny Appellant’s Proposition. *B. J. B. v. State*, 2004 OK CR 17, ¶¶ 6-7, 88 P.3d 931, 932.

DECISION

The order of the District Court granting the State’s Motion to Bridge Youthful Offender to the Oklahoma Department of Corrections in Tulsa County District Court Case Nos. YO-2015-38 and YO-2015-44 is **AFFIRMED**.

Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE KELLY GREENOUGH, DISTRICT JUDGE

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OPINION BY: LEWIS, V.P.J.

LUMPKIN, P.J.: Concur
HUDSON, J.: Concur

OA/F

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