

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
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STATE OF OKLAHOMA

FEB - 7 2008

MICHAEL S. RICHIE
CLERK

E.A.L.S.,)
)
Petitioner,)
v.)
)
THE STATE OF OKLAHOMA,)
)
Respondent.)

No. J-2008-36

ORDER DIRECTING DISTRICT COURT TO APPOINT COUNSEL

On January 10, 2008, Petitioner E.A.L.S., a juvenile, by and through trial counsel, Jerry D. Wade, Oklahoma Indigent Defense System (O.I.D.S.), filed a Notice of Intent to Appeal and Designation of Record in Case No. JDL-2007-46 from the District Court of Carter County. The appeal was assigned this Court's Case No. J-2008-36, and the Notice advises this Court that Petitioner seeks to appeal the District Court's order certifying Petitioner to stand trial as an adult. Petitioner is charged with First Degree Manslaughter.

Included with Petitioner's filings were an Advisory List of Propositions of Error (Exhibit B) and a Pauper's Affidavit (Exhibit C). Petitioner's Notice of Intent to Appeal indicated that Petitioner was previously determined to be indigent, but his indigent status order was vacated on January 7, 2008, "upon Court's learning Juvenile was admitted to bail in the amount of \$10,000.00".

The Pauper's Affidavit filed with this Court on January 10, 2008, alleged that Petitioner is indigent; that he is a minor; that he has no job; that he owns

no real or personal property; that he currently has no bank accounts or cash on hand; that he has clothing and personal effects valued at \$100; that he has not had retained counsel in this or any other pending criminal matter; that he has not sold or transferred any assets since these charges were filed; and that he has no other friends or family willing or able to assist in paying for his defense. Petitioner also states that the funds for the bond were provided by his brother with a down payment of \$200 and payments of \$50.00 every two weeks until the balance of approximately \$700.00 is paid. Petitioner affirms via his affidavit that he has no funds or income available to pay for transcripts, an attorney, or any other costs associated with his defense.

On January 17, 2008, this matter was remanded to the District Court of Carter County, the Honorable Thomas S. Walker, with directions to address Petitioner's claims of indigency in accordance with this Court's established guidelines for making such determinations. Rule 1.14, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), *Cleek v. State*, 1987 OK CR 278, 748 P.2d 39; *Petition of Humphrey* 1979 OK CR 97, 601 P.2d 103; *Bruner v. State*, 1978 OK CR 65, ¶ 7, 581 P.2d 1314, 1316. Judge Walker's order denying Petitioner indigency status was filed with this Court on February 1, 2008.

In finding that Petitioner was not indigent, Judge Walker determined that Petitioner was admitted to bail and that the pauper's affidavit submitted set out Petitioner's financial status, not that of his parents. The District Court found

that neither parent presented additional financial information to rebut the presumption that they are able to retain counsel to represent Petitioner in the appeal of the District Court's order certifying him to stand trial as an adult, nor had Petitioner sought to have the court confer rights of majority upon him. Judge Walker concluded that parental authority ceases over a child only under certain circumstances. He held that certification by a court that a child be held accountable for his acts as an adult does not absolve a parent of his or her financial responsibility for the child nor does it release the child from the parents' authority or confer rights of majority upon the child. Judge Walker denied Petitioner's request for appointed representation to appeal the order certifying him to stand trial as an adult and denied Petitioner's request for preparation of the record at public expense.

The District Court's order is **REVERSED** with instructions to appoint counsel to represent Petitioner in the appeal of the District Court's order certifying Petitioner to stand trial as an adult. Title 22 O.S. 2001 § 1355(B) states that the Oklahoma Indigent Defense System (O.I.D.S.) is created to provide counsel in cases where the *defendant* is indigent and unable to employ counsel. The statute does not distinguish between defendants who are adults, those who are minors or juveniles still within the custody and care of a parent or guardian, or those who might, by some twist of fate, be related to others who may have funds available to pay for a defense. The right to appointment of counsel is personal, and not to be determined based upon a finding that a

relative, close friend, spouse, or parent has the ability to pay for legal representation in a criminal proceeding.

Additionally, O.I.D.S. is charged with the responsibility of defending all indigent juveniles, in all cases other than mental health cases, in-need-of-supervision proceedings, and any other juvenile proceedings that are civil in nature. *See*, 22 O.S.2001 § 1355.6(A). Title 10 O.S.Supp.2006 § 7306-2.4(B) specifically provides that persons certified to stand trial as an adult as provided by the Youthful Offender Act shall have all the statutory and constitutional rights and protections of an adult accused of a crime. Those rights and protections include appointment of counsel upon a showing of indigency.

Judge Walker found that Petitioner's certification to stand trial as an adult did not absolve his parents of financial responsibility for providing him with legal representation. We have found no statutory or case authority supporting the conclusion that parents are financially responsible for providing legal representation for children charged with criminal offenses. The only statutory guideline regarding a specific parental duty to children can be found at 10 O.S. 2001 § 4, which specifies that a parent entitled to the custody of a child must give him support and education suitable to his circumstances. In defining "proper parental care or guardianship", O.U.J.1.(Juvenile) § 2.5 delineates many areas of care, supervision and protection which parents are required to provide for children, none of which include providing legal counsel in the event a child is

charged with a criminal offense.¹

To seek appointment of counsel, a defendant is required to submit an appropriate application to the court clerk setting forth his indigency status. See, 22 O.S.Supp.2002 § 1355A. The statute does not require submission of applications by parents, guardians, spouses, family members, friends or other interested or concerned parties. Petitioner has filed the requisite documentation indicating his status as an indigent defendant. Judge Walker made no finding that Petitioner's application, as submitted to the court clerk, was not an accurate representation of Petitioner's personal financial status. The submitted documentation indicates Petitioner is indigent for purposes of

¹ O.U.J.I. (Juvenile) § 2.5. "The term "proper **parental care** or guardianship" as used in these instructions, means that level of care, supervision, protection, nourishment, cleanliness, medical attention, education, mental stimulation, social stimulation, and all other parenting tasks which a reasonable and prudent parent having custody and control of a child would perform in order to insure the growth, development, learning, and physical and mental well being of the child." For authority supporting these elements of the definition, see *In re A.D.B.*, 1991 OK 96, ¶¶ 2-4, 818 P.2d 483, 485 (care, supervision, protection, nourishment, cleanliness); *Price v. Price*, 1977 OK 205, ¶ 12, 573 P.2d 251, 254 (care); *In re Moore*, 1976 OK 191, ¶¶ 15, 21, 558 P.2d 371, 374-75 (care, supervision, nourishment, cleanliness, medical attention); *Carignan v. State*, 1970 OK 82, ¶ 5, 469 P.2d 656, 658 (care, protection, mental stimulation); *In re C.T.*, 1999 OK CIV APP 55, ¶¶ 9, 12, 983 P.2d 523, 526 (care, supervision, protection, nourishment, cleanliness, education); *In re L.C.*, 1998 OK CIV APP 96, ¶¶ 11, 13, 962 P.2d 29, 32 (care, supervision, protection, nourishment, cleanliness, social stimulation); *In re C.A.R.*, 1994 OK CIV APP 124, ¶¶ 5, 14, 882 P.2d 582, 584, 585 (care, protection); *In re K.L.H.*, 1993 OK CIV APP 127, ¶ 16, 858 P.2d 1296, 1298 (care, protection); *In re O'Neill*, 1976 OK CIV APP 43, ¶¶ 7-9, 554 P.2d 864, 866-67 (supervision, nourishment, medical attention). See also 10 O.S. 2001, § 4 (noting the duty of a parent entitled to the custody of a child to furnish that child with an education); *id.* § 137 (noting the duty of a guardian controlling the estate of a child to furnish that child with an education); 21 O.S. 2001, § 852(A) (providing a parent or guardian "who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance" is guilty of a misdemeanor); 2 Cal. Jury Instr., Civ. 13.76 (2004 ed.) (parents and guardians have a duty to exercise "ordinary care in the [training,] [supervision,] [protection] [and] [control] of their minor children"); Wis. Jury Instr., Children 242 (defining "inadequate care" as less "than is reasonably necessary to provide sufficient food, clothing, housing, medical and dental services, education, or to meet the special needs of [the child]"); *id.* 250 (defining "necessary care" as "that care which is vital to the needs and physical health of the child").

seeking appointment of counsel.

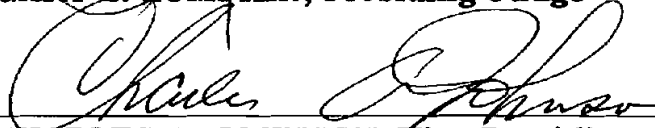
We find Petitioner is indigent for purposes of seeking to appeal the District Court's order certifying him to stand trial as an adult. The District Court's order is **REVERSED** with instructions to appoint counsel immediately and to order preparation of the appeal record at public expense.

IT IS SO ORDERED.


WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 7th day
of February, 2008.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

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