

WIN

MAR 18 2008

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

JEFFREY LEROY CARPENTER,)	
)	
Appellant,)	
)	
-vs-)	Case No. RE-2006-1322
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

**ORDER REVERSING DISTRICT COURT'S
REVOCATION OF SUSPENDED SENTENCE AND
REMANDING CASE WITH INSTRUCTIONS TO VACATE SENTENCE**

On March 2, 2001, Appellant entered a plea of guilty in Ottawa County District Court, Case No. CF-2000-366, to First Degree Rape. The Honorable Robert E. Reavis, II, Associate District Judge, sentenced Appellant to seven (7) years incarceration, with all but the first three (3) suspended, pursuant to terms and conditions of probation.

On April 4, 2006, the State filed an Application to Revoke Suspended Sentence. In the motion, the State alleged Appellant had 1) failed to register as a sex offender as directed,¹ 2) failed to pay probation fees, and 3) failed to pay his fines and costs.

On June 19, 2006, a hearing was held before the Honorable Robert E. Reavis, II, Associate District Judge. At the conclusion of the hearing, the court revoked Appellant's sentence in full. It is from this order of revocation that Appellant appeals.

¹ These allegations formed the charges against Appellant in Ottawa County District Court Case No. CF-2006-120.

In his first assignment of error, Appellant contends that because he was charged as, and ordered by the trial court to be treated as a youthful offender, his subsequent confinement to an adult prison as punishment for the underlying offense was an illegal sentence and therefore, not subject to revocation. In his second assignment of error, Appellant contends his trial counsel was ineffective for failing to timely object to the improper treatment as a Youthful Offender.

We **FIND** Appellant's argument to have merit. Appellant was charged as a Youthful Offender. The record reflects the trial court later ruled Appellant would remain a Youthful Offender throughout the proceedings. Appellant later entered a plea of guilty to the charge, and the court accepted Appellant's plea of guilty as a Youthful Offender. The court ordered the preparation of a Pre-Sentence Investigation through the Office of Juvenile Affairs.

At the sentencing hearing, the trial court asked Appellant if he understood he was going to be sentenced under the Youthful Offender Act. However, the court then told Appellant it was going to sentence him as an adult because he was close to nineteen years of age and there were no programs available within the Office of Juvenile Affairs which he could complete prior to aging out of the juvenile system.²

First Degree Rape committed by an offender seventeen years old is an offense specifically addressed by the Youthful Offender Act. See 10 O.S.Supp.1998, Section 7306-2.5(A)(6). Under the Act, Appellant was properly

² The court also discussed other factors, including the nature of the offense, Appellant's maturity, the likelihood of rehabilitation.

charged as a Youthful Offender. Thereafter, the only way his status could have changed was by the State seeking to certify him as an adult for sentencing, or by defense counsel seeking to certify Appellant as a juvenile. See 10 O.S.Supp.1998, Section 7306.2.8(A).

Nothing in the record indicates the State ever filed a motion to have Appellant sentenced as an adult. Thus, we **FIND** the State waived its opportunity to have Appellant sentenced as an adult. See *A.J.B. v. State*, 1999 OK CR 50, 992 P.2d 911, wherein this Court found the State had waived the opportunity to seek adult sentencing by allowing proceedings to continue through the entry and acceptance of the guilty plea.

Once the trial court accepted Appellant's plea of guilty as a Youthful Offender, its sentencing options were limited to sentencing Appellant as a Youthful Offender. See 10 O.S.Supp1998, Section 7306-2.6(A)(6). The District Court's failure to do so was plain error and constituted an illegal sentence.³

Appellant is now beyond the scope of treatment in the Youthful Offender programs. Therefore, remanding this case to the District Court for new sentencing proceedings as a Youthful Offender is not a viable option. Further, jeopardy has attached. See *In the Matter of R.G.M.*, 1978 OK CR 28, 575 P.2d 645.

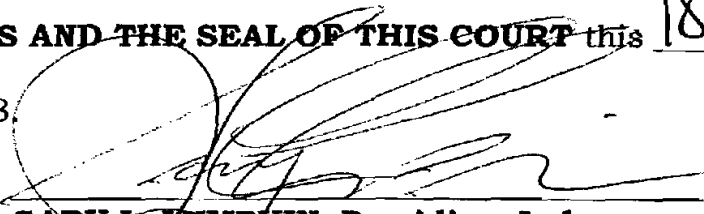
IT IS THEREFORE THE ORDER OF THIS COURT, for the reasons stated above, that this case is **REMANDED** to the District Court with instructions to

³ Compare *Bumpus v. State*, 1996 OK CR 52, 925 P.2d 1208 wherein this Court held that a sentence unauthorized by law was void or voidable from inception.

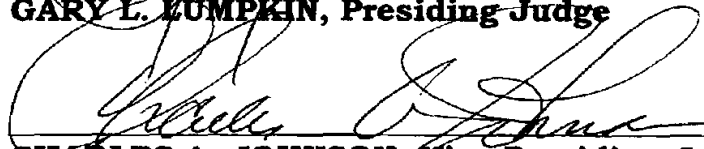
VACATE the sentence imposed. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 18th day of March, 2008.



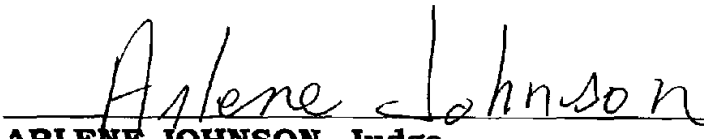
GARY L. LUMPKIN, Presiding Judge



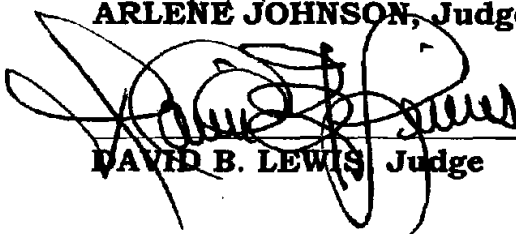
CHARLES A. JOHNSON, Vice Presiding Judge



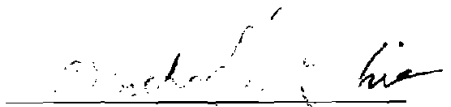
CHARLES S. CHAPEL, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:


Clerk

F/RA