

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

Z.N.,

Appellee.

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**NOT FOR PUBLICATION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

No. JS-2016-1062

SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR - 3 2017
MICHAEL S. RICHIE
CLERK**

On May 25, 2016, Appellee, Z.N., was charged as a Youthful Offender with one count of First Degree Burglary in Oklahoma County Case No. CF-2016-4281. Z.N. was 16 years, 7 months and 16 days old at the time the offense was committed. On July 15, 2016, Z.N. filed a Motion for Certification as a Juvenile, pursuant to 10A O.S.2011, § 2-5-206(F)(3). On October 12, 2016, after a hearing held October 7, 2016, the District Court of Oklahoma County, the Honorable Geary L. Walke, Special Judge, denied Z.N.'s request for juvenile certification. On October 17, 2016, Z.N. filed a Motion for Clarification with regard to Judge Walke's order. On November 4, 2016, Judge Walke reversed his original ruling and granted Z.N.'s motion for certification as a juvenile. It is from this ruling that the State appeals, alleging as its sole proposition of error that Judge Walke abused his discretion in granting Z.N.'s request for juvenile certification.

Pursuant to Rule 11.2(A)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), this appeal was automatically assigned to this Court's Accelerated Docket. The propositions and issues were presented to this Court in oral argument on February 16, 2017, pursuant to Rule 11.2(E). At the conclusion of oral argument, the parties were advised of the Court's decision.

The question before this Court is whether the trial court abused its discretion in granting Z.N.'s motion to be treated as a juvenile. "[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, emphasis added..) *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, 70 OBJ 946, 946 (Okla.Cr. 1999).

The State has not shown that the District Court abused its discretion in granting Z.N.'s motion.

Z.N. was properly charged as a Youthful Offender. However, 10A O.S.2011, §2-5-206(F)(1) allows the accused to file a motion or certification as a juvenile. When such a request is made, the District Court must conduct a hearing, and consider the factors listed at 10A O.S.2011, § 2-5-206(F)(3)¹. The

¹ The factors to be considered are as follows:

- a. whether the alleged 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 personal injury,

trial court is to make a determination, issuing findings of fact and conclusions of law, setting forth the reasons for granting or denying the motion. See 10A O.S.2011, § 2-5-206(F)(4). After reviewing the appeal record in its entirety, and hearing argument of the parties, we cannot find that Judge Walke's ruling was an abuse of discretion.

DECISION

The order of the District Court of Oklahoma County granting Appellee's request for certification as a juvenile in Oklahoma County Case No. CF-2016-4281 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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,

d. the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,

e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,

f. the reasonable likelihood of rehabilitation of the accused person if the accused is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and

g. whether the offense occurred while the accused person was escaping or in an escape status from an institution for youthful offenders or juvenile delinquents.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE GEARY L. WALKE, SPECIAL JUDGE

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OPINION BY: LUMPKIN, P.J.

LEWIS, V.P.J.: Concurs
JOHNSON, J.: Concurs
SMITH, J.: Concurs
HUDSON, J.: Concurs

OA/F