Mandatory Transfer + Life Without Parole = Death by Incarceration

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Few people ever give much thought to what children have to go through when they are thrown into an adult criminal justice system which was neither designed nor intended for them. This is a system whose incapacitating and retributive nature does not foster any principles of rehabilitation for children.[1] If it did, many of them would not be forced to spend countless decades incarcerated and die as old men and women in prison. Often these children were coerced into situations they were powerless to extricate[2] themselves from due to peer pressure,[3] threats of violence,[4] or worse. I know this struggle better than most. After all, I am one of those children.

Under Oklahoma law in 1994, if you were 13-years-old, and charged with murder,[5] or in my case felony-murder, you were automatically transferred into the adult criminal court. By Oklahoma's definition, no one in this category was to be looked at as a "child".[6] If you were ill-fated enough to be 16 or 17, then there was a very real likelihood of facing the death penalty.[7] I had to attempt to convince the court in a "reverse-certification" hearing to consider me as the naïve 140 pound sixteen-year-old child I was. This hearing was held after a criminal preliminary hearing[8] in order to determine if there was any merit to the current charges.[9]

The prosecutor has sole discretion to choose what charge or charges I would face.[10] This discretion along with the reverse-certification statute, enabled the state to enhance what I could be charged with, which also allowed them to bypass the juvenile court altogether and automatically place me in the adult criminal court. I was an adult in the eyes of the law from the day I was arrested because of how the state decided to charge me.

The reverse-certification statute places the burden on the child to request a hearing,[11] and instead of starting in a juvenile court, like a standard certification hearing that requires the state to prove "substantial evidence" that the child is "not amendable for rehabilitation",[12] the burden is shifted to the child to "clearly"[13] show why they should be removed from adult criminal court and be placed in juvenile court. This "critically important"[14] hearing was "comparable in seriousness to a felony prosecution",[15] and since I had to "clearly" show that I deserved to be treated like the child I was, this burden was impossible for me to overcome.[16] My fate in Oklahoma's criminal system was hopelessly set against me from the start.

The reverse-certification statute is explicitly clear on what a judge was required to do: The judge "[S]hall state the court has considered each of the guidelines in reaching its decision".[17] Yet this statutory mandate was not followed in my situation. All the judge said was "The defendant's motion under 10 O.S. 1104.2 to certify as a child is overruled".[18] The reason it is imperative that a judge state that he actually considered all the guidelines is to show there was no abuse of discretion when reaching his decision. Maybe the judge deliberately left an opening for a solid ground of appeal. Yet no appeal was filed on my behalf for this obvious violation. The decision to deny my certification as a child certainly bothered the judge enough that he stated to my attorney, "This is one case I would not mind being reversed on".[19] Thinking rationally, what judge wants to have his decision overturned, and his judgement questioned? It is also important to note that the only thing a child can appeal on a denial of a reverse-certification decision is whether the judge abused his discretion in reaching his decision.[20]

I was kept in the adult criminal court, and with a felony murder charge, this placed upon me during my trial, the highest burden of proof (beyond a reasonable doubt) to prove instead of the prosecutor. From the moment I was arrested and charged, the burden was shifted from the prosecutor to me every step of the way (reverse-certification,[21] felony murder charge,[22] and an affirmative defense of duress).[23]

Facing a felony murder charge is difficult to defend. The state does not have the burden of proving any of the facts that they normally would have to prove (i.e., intent to commit murder) in a typical murder trial.[24] The district attorney knew without a doubt I had nothing to do with the murder. Otherwise, why would he say, "Where's the evidence that he aided and assisted in the murder? I don't know if there is any".[25] The same district attorney had already prosecuted my 23-year-old co-defendant as the murderer and convinced a jury to sentence him to death. On top of having no evidence of my involvement in the murder, my attorneys decided to use an affirmative defence of duress, where the burden was upon me to show through force or fear my actions were excusable.[26] Attempting to overcome this burden proved impossible.

Prior to my arrest I had never been convicted of a felony. I had an I.Q. of 83, which was equal to that of a 12-year-old child. I suffered from Attention Deficit Hyperactivity Disorder, and I had for over a decade been beaten, almost on a daily basis, by an older stepbrother. These mitigating factors

were not able to overcome the law's automatic mandatory transfer. The court was prohibited in an arbitrary and capricious manner from considering any biological or psychological characteristics related to my youth, no matter how compelling they might be.[27]

Consider the following three factors: 1) The natural immaturity and undeveloped brain I had as a 16-year-old child; 2) Suffering for over a decade in an abusive environment that brought on toxic stress which contributed to my brain being on the same developmental level to that of a 12-year-old child; 3) Being automatically thrown into an adult criminal court where I was facing the death sentence. When you consider these factors, it is easy to understand why it was impossible for me to rationally respond to my attorneys and make critical life-altering decisions in a court of law that would impact the trajectory of my entire life. How could I realistically choose between life without parole (LWOP) and die a long slow death, or roll the dice and see if I would be sentenced to death and know the exact day my life would end?

As a child, I was not allowed to do many things since I was part of a "protected class".[28] I could not purchase alcohol or tobacco products, sit on a jury, vote, marry without parental consent, enlist in the military, or even enter into a valid contract. Children under 18 are not considered to be mature or responsible enough to make such dramatic life-altering decisions. So this "protected class" was designed to protect children from themselves and any irrational and immature decision they might make. Yet it was perfectly acceptable for the state to ignore these legal protections when it forced me to enter into a contract to plead guilty to avoid the death sentence. Those protections magically vanished only because I was 16 instead of 15. Being a child, sitting in the adult county jail, considered as an adult, I was not allowed to ingest tobacco products under state law due to my age. After all, the state was trying to protect me. But crazily enough, it was permissible for the state to inject me with a lethal cocktail of drugs while strapped to a gurney at the age of 16.

At the prosecutor's behest, a "Bill of Particulars" was filed requesting, upon conviction, for me to be executed by lethal injection without me ever taking a life. This Bill of Particulars was a formal request to the court that the state would be asking for me to be sentenced to death if I were to be convicted. It is astonishing that, with personal aspirations of moving up the political ladder, the district attorney is allowed to wield such unrestricted

discretionary power. Not even a Supreme Court Justice has such power. If the Supreme Court had not intervened in 1988,[29] Oklahoma would have likely continued its practice of attempting to execute children under 16.[30] Unfortunately for me, it took nine years after I plead guilty to avoid the possibility of being sentenced to death before executing any children, including those 16 or older, was banned.[31] Being a child who was sentenced to death has a lasting impact even after having the sentence overturned. After speaking with Wayne Thompson, the 15 year old child from the landmark case SCOTUS handed down in 1988, and who I have known for many years, he stated to me, "Even though SCOTUS may have removed me from death row, this has not released me from the injustice I feel, because after 42 years, I have just now been given a new date, my release date".[32] Wayne Thompson has recently been granted parole and his projected release date is October 23, 2025. This is a far cry from the last time the state set a date for him, his execution date (April 2, 1984).

Sentencing Wayne Thompson to death and setting his execution date is an unthinkable thing to go through at the age of 15. However, make no mistake, LWOP is just as horrible as the death sentence. "The only people who think that the death penalty is a more severe punishment than life without parole are those not serving the sentence",[33] states David Fleenor as he describes how it is impossible for those who have never experienced a LWOP sentence to fathom the toll it takes on the mind of a human being. It takes decades even for those who are serving this sentence to comprehend what this living death sentence really is and what it takes from you. The sentence removes all hope from your life. The dictionary defines hope as: "To wish for something with the expectation of fulfillment…To look forward with confidence or expectation".[34] When you are serving LWOP, there is nothing to look forward to. The idea of hope cannot be imagined. Only those in prison who will one day be leaving have hope. Hope is not for those sentenced to death by incarceration. Someone serving LWOP tricks themselves into believing that one day they will be free. They manufacture this false hope in order to cope with the fact that they will never be free again. Most of those serving this sentence do not even realize they are doing this. They are nothing more than amateur magicians attempting to deceive themselves with the illusion of freedom, because that is all they have. Many of us spend decades educating ourselves building on top of this manufactured hope. We fool ourselves into believing that one day,

because of all the hard work we put into transforming ourselves into a more empathetic and compassionate human beings, that this will somehow be acknowledged and accepted by others outside of the prison system. We deceive ourselves into believing, that by doing this we can show society that we are more than our last worst mistake. The reality, however, is that the only hope we really have is that when we walk into the dining hall, we can get a tray of food that does not have bugs or rodent fecal matter in it.

There are 483 children who are currently serving a juvenile life without parole (JLWOP) sentence in the U.S.,[35] a drastic decrease from the over 2,800 prior to Miller v. Alabama being decided. However, there is still a long way to go. Many states have taken important steps in lowering this number. Unfortunately, Oklahoma is not one of them. A report published by Mills and colleagues (2016) showed that there were 11 children in Oklahoma serving JLWOP in 2015. However, the data that was provided for this report was inaccurate. The reason I know this is because I personally knew 20 of the 42 children who were serving a JLWOP in 2015. Of those 42 children, 18 were white, 18 Black, 5 Hispanic, and 1 Pacific Islander. Why the authors were not given accurate data when they requested it is unclear at this time. One thing is clear though: from the 42 children in 2015 to the current number of 39 still incarcerated (Bennett et al., 2024, p. 10) it is evident that Oklahoma is far behind the majority of the country in granting freedom to children who are serving JLWOP. Almost every child in Oklahoma serving JLWOP knows each other. One thing we all would like to see is for Oklahoma's view on children to change enough so that none of us would be sentenced to death by incarceration. Serving a sentence that deprives you of your humanity is cruel, unusual, and downright torturous. We do not want to be forced to spend countless decades in prison never to be released. Nor do we want to be released when we are so old and frail that we can no longer have any quality of life in the free world, like Joseph Ligon. Joe was arrested on February 11, 1953 when he was 15 years old. Only after serving 68 years and having the record of the longest continuous incarceration for a child in U.S. history, was he released February 20, 2021[36] at the age of 83. My 31 years in prison pales in comparison to Joe's time.

Anytime they choose, agents of the state, like district attorneys, can enforce or disregard any and all state laws as long as they believe their decision is in the public's best interest. They disguise it as administering

justice, but in many cases their decisions serve their own political interests. The child's best interest is not considered. The state removes children from abusive homes and sends those same children to prison where they will continue to be abused by adults. State-sanctioned child abuse is still child abuse. Too often, political motivations cloud the judgments of our appointed leaders into passing laws that remove protections from children due to nothing more than their unjustified and unreliable emotions.

Children who commit crimes must be held accountable for the harms they have inflicted upon society. However, this does not mean that locking them up for the rest of their lives is the answer. When are we, as a society, finally going to wake up and see that the traumas we perpetrate upon our children now, when left untreated and allowed to fester in their minds, will ultimately determine how they treat others after they have grown up? We need to advocate to our state and local leaders that automatically sending our children to the adult criminal system does not protect society (Bennett et al., 2024, p. 10). Society is safer when we educate these children, typically through restorative justice programs. Taking part in restorative justice programs can help these children to recognize that their unacknowledged and suppressed childhood trauma often resurfaces in the future to fuel criminal behaviour. Often in these restorative classes it marks the first time many of the people have accepted responsibility and consider the harmful impact their actions have on the lives of their victims, their families, and the community as a whole. It is through education and accountability that society becomes safer when we equip these children with the knowledge of what empathy truly is, and the life-altering seriousness of how their actions have affected the lives of everyone involved. Empowered with this knowledge, they can pass it on to others, especially their children. Then maybe, just maybe, we can start to break the never-ending legacy of mass incarceration. If we do not, for those children who are released with no education, nor social or professional skill, this will inevitably lead the overwhelming majority right back to prison.

ENDNOTES

1 *Graham v. Florida*, 560 U.S. 48, 71 (2010).

2 *Miller v. Alabama*, 576 U.S. 460, 471 (2012). This case addressed how juveniles are less likely to extricate themselves from crime-producing settings.

[3] *Graham v. Florida*, 560 U.S. 48, 68 (2010). This case quoted *Roper v. Simmons*, 543 U.S. 551, 569 (2005) to discuss how juveniles are more susceptible to peer pressure than adults.

[4] *Jones v. Mississippi*, 593 U.S. 98, 146 (2021). (Sotomayor J., dissenting) ("In his short life before the murder, Jones was the victim of violence and neglect that he was too young to escape".)

[5] 1994 OK. HB 2640 Section 22 ("Any person thirteen (13), fourteen (14), fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree shall be held accountable for his acts as if he were an adult…")

[6] *Highsaw v. State,* 758 P.2d 336, 338 (1988) (showing that "The legislature's clear intent in changing the definition of "child" in 1982 was to give persons 16 and 17 years of age adult status").

[7] Okla. Stat. tit. 21 § 701.10 and 1992 OK. HB 2271 (amending the aforementioned statute, which is a provision in Oklahoma criminal code regarding the death penalty).

[8] *W.D.C. v. State*, 799 P.2d 142, 144 (1990).

[9] *L.M.O.C. v. State*, 744 P.2d 1271, 1273 (1987) (quoting *Berryhill v. State*, 568 p.2d 1306, 1310 (Okla. Cr. 1977).

[10] *Bordenkirchir v. Hayes*, 434 U.S. 357, 365 (1978), (citing *Oyler v. Boles* U.S. 448, 456 (1962) (stating that "the decision whether or not to prosecute, and what charge to file…generally rests entirely in his discretion).

[11] *A.T., Jr. v. State*, 773 P.2d 755, 812 (1989).

[12] *J.M.R. v. Moore*, 610 P.2d 811, 813 (Okla. Crim. App. 1980) quoting *Kent v. United States*, 383 U.S. 541, 533 (1996).

[13] *Trolinger v. State*, 736 P.2d 168, 170 (explaining how a child "is treated as an adult until he clearly sustains his burden of proof".).

[14] *J.M.R. v. Moore*, 610 P.2d 811, 813 (Okla. Crim. App. 1980) (quoting *Kent v. United States*, 383 U.S. 541, 533 (1996).

[15] Id.

[16] *State ex rel. v. Rakestraw*, 610 P.2d 256, 259 (1980) (explaining why the Oklahoma Court of Criminal Appeals believed that "most if not all 16 or 17-year old persons" would not be able to leave the adult court system once there). State v. Woodward, 737 P.2d 569, 571 (1978) (showing a juvenile must overcome a "heavy burden" in order to be remanded to the juvenile court).

[17] 1994 OK. HB 2640 Section 32 (E).

[18] *State v. Elliott*, Transcript of Proceedings (Reverse Certification/Criminal Preliminary Hearing) June 30, 1995, pg. 84, lines 21-25.

[19] "Exhibit C" Affidavit, August 28, 1995.

[20] *G.E.D. v. State*, 751 P.2d 755, 757 (citing *Trolinger v. State*, 736 P.2d 168, 170 (1987)).

[21] Okla. Stat. tit. 21, § 693 (2023) (regarding the burden of proof the prosecution needs to meet to convict a person for murder or manslaughter); *J.M.R. v. Moore*, 610 P.2d 811, 813 (Okla. Crim. App. 1980).

[22] *Wade v. State*, 581 P.2d 914, 916 (1978) (explaining that "[t]he primary function of the Felony-Murder Doctrine is to relieve the prosecution of the necessity of proving actual malice or premeditated intent…").

[23] "A defendant's assertion of the facts and arguments that, if true, will defeat the plaintiff's or prosecutor's claim…The defendant bears the burden of proving an affirmative defense". Black's Law Dictionary (11th edition, 2019).

[24] *McCracken v. State*, 887 P.2d 323,332 (1994) (stating that a "felony murderer may be sentenced to death absent an intent to kill".)

[25] *Elliott v. State*, Transcript of Jury Trial Proceedings, Volume V of V, pg. 991 (1996).

[26] *Tully v. State*, 730 P.2d 1206, 1209 (1986) (stating "duress as defense to crime was based on society's realization that a person, when faced with the choice of two evils, should not be punished for accomplishing the lesser evil, and thereby avoid the crime of greater magnitude).

[27] 1994 OK. HB 2640 Section 32 (amending Section 1104.2 € to include guidelines when a court may treat and accused person as a child, none of which include the biological or psychological characteristics of youth).

[28] *Thompson v. Oklahoma*, 487 U.S. 815, 822-23 (1988) (listing activities minors are prohibited from doing); *Malaske v. State*, 89 P.3d 1116, 1117 (Okla. Crim. App. 2004) (describing minors – those under 21 – as a "protected class" in the context of alcohol possession and consumption).

[29] *Thompson*, 487 U.S. 815 at 838.

[30] *Ridge v State*, 220 P.965, 965 (Okla. Crim. App).

[31] *Roper*, 543 U.S. at 551.

[32] Interview with Wayne Thompson. Conducted on April 4, 2025.

[33] Interview with David R. Fleenor. Conducted on April 25, 2025. David was sentenced to LWOP at the age of 25.

[34] American Heritage Dictionary, Second College Edition.

[35] See http://cfsy.org/sentencing-children-to-life-without-parole-national-numbers

[36] See the fall 2022 newsletter of The Campaign for Fair Sentence of Youth.

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Eric Elliott has been incarcerated for 30 years in Oklahoma and is serving life without the possibility of parole for a felony-murder that occurred when he was sixteen years old.