

MANDATORY TRANSFER + LIFE WITHOUT PAROLE = DEATH BY INCARCERATION

BY ERIC ELLIOTT

Few people ever give much thought as to what juveniles have to go through when they are thrown into an adult criminal justice system which was neither designed nor intended for them. The incapacitating and retributive nature of the system does not foster any principles of rehabilitation for juveniles.¹ If it did, many youth would not be forced to spend decades incarcerated and die as old in prison. Often, these juveniles were coerced into situations they were powerless to extricate² 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 juveniles.

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 justice system. If you were ill-fated enough to be 16 or 17, then you had a very real likelihood of facing the death penalty.⁶ After the charges had been brought against me, I had to attempt to convince the court in a “Reverse-Certification” hearing to consider me for what I was: a naive sixteen-year-old child, weighing in at 140 pounds, instead of the adult the law presumed me to be. The hearing was “critically important,”⁷ “comparable in seriousness to a felony prosecution”,⁸ and placed the burden of proof on me, instead of the prosecutor, to prove I should be treated as a child. I had to “clearly”⁹ show I should be removed from adult criminal court and be placed in juvenile court. This burden was impossible for me to overcome.¹⁰ I was kept in the

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

² *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (explaining that juveniles are less likely to extricate themselves from crime-producing settings).

³ *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *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 Okla. Stat. tit. 21, § 701.10 and 1992 OK. HB 2271 (amending the aforementioned statute, which is a provision in the Oklahoma criminal code regarding the death penalty).

⁷ *J.M.R. v. Moore*, 610 P.2d 811, 813 (Okla. Crim. App. 1980) (quoting *Kent v. United States*, 383 U.S. 541, 553 (1966)).

⁸ *Id.*

⁹ *Tolinger v. State*, 736 P.2d 168, 170 (explaining how a child “is treated as an adult until he clearly sustains his burden of proof.”)

¹⁰ *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, 572 (1978) (showing a juvenile must overcome a “heavy burden” in order to be remanded to the juvenile court).

adult court, and with a felony murder charge the highest burden of proof was imposed on me rather than on the prosecutor(beyond a reasonable doubt) to provide 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,¹¹ felony murder charge,¹² and affirmative defense of duress¹³). Attempting to navigate this was insurmountable.

Prior to my arrest I had never been convicted of a felony. I had an I.Q. of eighty-three, which was equal to that of a twelve-year-old child. I suffered from Attention Deficit Hyperactivity Disorder, and for over a decade, I had been beaten almost on a daily basis by my older step-brother. These mitigating factors were not able to overcome the law's automatic mandatory transfer *to adult court*. 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.¹⁴ The district attorney knew without a doubt I had nothing at all to do with the murder. After all, he did concede, "Where's the evidence that he aided and assisted in the murder? I don't know if there is any."¹⁵ 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.

As a juvenile, I was not allowed to do many things since I was part of a "protected class."¹⁶ 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 eighteen 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 *decisions* 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 by pleading guilty to avoid being sentenced to death. Those protections magically vanished only because I was 16 instead of 15. Being a juvenile, 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 would have been permissible for the state to inject me with a lethal cocktail of drugs while strapped to a gurney at the age of 16.

Exercising his discretion by determining what crime to charge me with, the district attorney forced me to become an adult in the eyes of the law by charging me with felony murder

¹¹ Okla. Stat. tit. 21, § 693 (2023) (regarding the burden of proof the prosecution needs to meet to convict a person for murder of manslaughter); *J.M.R. v. Moore*, 610 P.2d 811, 813 (Okla. Crim. App. 1980)

¹² *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. . .").

¹³ "A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim . . . The defendant bears the burden of proving an affirmative defense." *Defense*, Black's Law Dictionary (12th ed. 2024).

¹⁴ 1994 OK. HB 2640 Section 32 (amending Section 1104.2(E) to include guidelines describing when a court may treat an accused person as a child, none of which include the biological or psychological characteristics of youth).

¹⁵ *Elliott v. State*, Transcript of Jury Trial Proceedings, Volume V of V, pg. 991 (1996).

¹⁶ *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).

instead of the underlying felony. Also, at his behest, a “Bill of Particulars” was filed requesting, upon conviction, for me to be executed by lethal injection despite the fact that I’d never taken a life. It is astonishing that, with personal aspirations of moving up the political ladder, the district attorney was allowed to wield such unrestricted power. Not even a Supreme Court Justice has such power. If the Supreme Court had not intervened in 1988,¹⁷ Oklahoma would have likely continued its practice of attempting to execute juveniles under 16.¹⁸ Unfortunately for me, it took another 9 years after my guilty plea before executing any juvenile, including those 16 or older, was banned.¹⁹

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 and exercising discretion, 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 prisons 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 elected leaders into passing laws that remove protections from children due to nothing more than *their* unjustified and unreliable emotions.

We must commit to stop allowing our children to be chewed up and spit out of the criminal justice system. This system only creates an endless cycle of crime by releasing individuals without the chance to develop social or professional skills. This inevitably leads the overwhelming majority of those released right back to prison. When are we, as a society, finally going to wake up and see that the traumas we perpetrate against our children now, when left untreated and allowed to fester in their minds, will ultimately determine how they treat others in their adulthood? After all, children imitate what they see adults doing. This cannot be the legacy we want to leave for future generations to follow.

About the Author

Eric Elliott has been incarcerated since 1994 in Oklahoma and is serving a Life Without Parole sentence for a felony murder that occurred when he was 16 years old. Eric uses his lived experiences to expose how the criminal system causes a lifetime of harm to children who are forced into it. He works tirelessly to educate himself in order to gain a deeper understanding of his own abusive childhood and the life-long impact it has had upon him. It is through his hard work and dedication that he hopes he will one day be given the opportunity to advocate to the free world what he knows to be true: that locking children up until they die must never be the answer. He can be reached at the following address:

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¹⁷ *Id* at 838.

¹⁸ *Ridge v. State*, 220 P. 965, 965 (Okla. Crim. App. 1923).

¹⁹ *Roper*, 543 U.S. at 551.

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