

HILL & STEEL

JUDGE: SHARBUTT

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3 August 1979

MOTION FOR TREATMENT AS YOUTHFUL OFFENDER

THE COURT: Circuit Court of Coosa County is in session. We are here today in the case, or cases, of Timothy Charles Davis. I believe he has three felony cases.

Let the record show that the Defendant, Timothy Charles Davis, is in open court in the presence of counsel, Honorable Lee Sims, in each of these cases.

In the case CC 79-08, the Defendant is charged with the crime of Murder One and, likewise, the same Defendant, in Case Number CC 79-09, the Defendant is charged with the felony crime of Robbery and, likewise, in Case Number CC 79-10, the Defendant is charged with the felony crime of Sodomy, and, likewise, in Case Number CC 79-12, the Defendant is charged with Robbery and, in the course of said Robbery, Intention of Killing, one Mrs. Avis Alford.

Now, as the Defendant in this case, under the Alabama Youthful Offender Act, the trial court advises you, as the Defendant and in the presence of your counsel,

One, that if the Defendant applied for and was granted youthful offender status, the Defendant would be tried before the Court without a jury and if found guilty as charged, Defendant would be adjudged a youthful offender.

Two, the sentence may be suspended.

Three, Defendant may be placed on probation for a period not to exceed three years.

Four, Defendant may be fined not to exceed a thousand dollars, with or without incarceration, or Defendant may be committed to the custody of the Director of Department of Corrections, State of Alabama, for a period of not

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more than three years.

Five, any adjudication of being a youthful offender would not disqualify Defendant from public office or public employment or operate as a forfeiture of any right or privilege or make him ineligible to receive any license granted by public authority.

Six, such conviction could not be deemed to a conviction of a crime, except that if such person were subsequently convicted of a crime a prior adjudication of his being a youthful offender could be considered.

Seven, fingerprints, photographs and other record of the Defendant, if the Defendant were adjudged a youthful offender, would be bared from public inspection, and that is the guidelines from the appellate court, case of Raines versus State, 294, Ala.360; 317 So. 2d, 599, a 1975 case.

The Court now hands the defendant and his counsel a copy of the Rights under the Youthful Offender Act, as recited by the court, and as recited in the record of the Court.

Now, I will ask you to be seated at the counsel table with the Defendant. Let me go over this with you and this applies in each of these felony cases, in the three felony cases, and also, in the capital case.

The Court is not so sure, as a matter of law, that the Youthful Offender Act even applies to the capital case, robbery, and in the course of said robbery, intentionally killing the victim, but, in abundance of caution and to

protect the record, the Court is going to allow the Defendant the privilege and opportunity to make application for his case to be treated as a youthful offender

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case in that case, as well as, the other cases.

The Defendant's statement to the Court, " I, Timothy Charles Davis, Defendant, eighteen years of age, being born on the 18th day of March, 1961, and having been conferred with and advised by my attorney, Lee Sims, make application for youthful offender treatment. I have been informed by my attorney and by the Court, One, that I am absolutely entitled to a public trial, if I wish it, and in such event, the jury, alone, would determine my guilt or innocence, but, if accorded youthful offender benefits, the Judge, alone, would determine my guilt or innocence; Two, that I would have the right to be represented by my lawyer at such jury trial; Three, that the Court would subpoena any witness for me, which I requested and that I would have the right, upon trial by jury, to see, hear and question all witnesses, including those that the State of Alabama presented against me and that I would have the right to testify myself at such jury trial, but would not have to do so. Four, I further consent for an examination and investigation of me by the Court and its Officers and, particularly, the Probation Officer, in connection with my request here made and that I be arraigned and charged with being a youthful offender. Five, I have not been promised any favor from any person to induce me to consent to such examination and investigation by the Court. This the 3rd day of August, 1979."

Now, in the presence of your counsel, if you wish the Court to consider your case as a youthful

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offender case, this is a prerequisite to such consideration. I will ask you, in the event you elect to do so, to execute those in the presence of your lawyer and on the advice of your lawyer, one way or the other.

WHEREUPON, Counsel, Mr. Lee Sims, requested a recess to confer with the Defendant. The Court granted the request for a recess; Afterwhich, the proceedings were resumed as follows:)

THE COURT: Mr. Davis, do you understand your rights under the Alabama Youthful Offender Act, as explained to you by the Court?

THE DEFENDANT: Yes, sir.

THE COURT: In each of these cases, you have filed an application for your case to be treated as a Youthful Offender Case and that is, CC 79-08; CC 79-09; CC 79-10; CC 79-12.

The Court is going to continue your motion and application for hearing until ten o'clock a.m. August 10, 1979, in the courtroom of the Coosa County Courthouse, at Rockford, Alabama.

Now, let me just say this. All of your counsel, that will participate in your trial of your cases, it will be necessary to be here next Friday for arraignment. It is absolutely necessary that the same lawyer stand with you at arraignment that stands with you at the trial of your case.

DISTRICT ATTORNEY: Judge, that is in the event that you deny youthful offender, you expect to arraign him that day?

*Handwritten note:*  
The court has already decided

THE COURT: Yes, sir, and if the Court decides that you are entitled to the youthful offender treatment of your cases, of course, the Court will arraign you as a youthful offender that day also.

Before we adjourn court, I want to ask, has the Probation Officer made an investigation of this Defendant?

A. Yes, sir.

THE COURT: All right, I want the record to show that a copy of the Probation Officer's report to the Court on presentence investigation is handed to the Defendant and his Counsel in open court.

COURT WAS ADJOURNED

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10 August 1979

10:00 a. m.

MOTION FOR TREATMENT AS YOUTHFUL OFFENDER CONTINUED

MR. EDWARDS: Your Honor, in looking at the report submitted by the Probation Officer, I noted that the main recommendation against granting youthful offender was the fact that he says, quote, "Due to the fact that Timothy Davis fled the state of Alabama and the seriousness of the offense, I do not recommend youthful offender."

The circumstances surrounding what the Probation Officer describes as fleeing of the state was not such. This young man was released from the custody of this court on a detention hearing. He went to stay with a brother, who lives in Georgia. There were proceedings thereafter, but eventually there was a voluntary return to the state of Alabama by this Defendant. So, I would like to just clear up the record from our standpoint as far as what has been argued.

The application for youthful offender is something, I think, falls squarely between the nature of the offense and the ability of twelve people, wherever they are drawn from, to be able to separate the nature of the offense in the guilt or innocence of this young man,

I certainly recognize it is well within the Court's discretion as to granting of youthful offender, but this boy is a mere child, He is well within what the youthful offender status was intended for and, again, as far as the ability of whoever it is, we have gone through this thing

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in this court many many times now, The nature of the offense, I'm not sure there is anybody, other than this Court, that could separate what they are involved with with a guilt or innocence, So from that standpoint, I very strongly request that this Court grant the application for youthful offender,

DISTRICT ATTORNEY: Judge, could the state be heard, please?

THE COURT: Yes, sir,

DISTRICT ATTORNEY: I think basically the State would make two or three principal arguments,

Number One, Mr. Davis left the state of Alabama and was in the state of Georgia and the State of Alabama had to institute proceedings to have him extradited through what was a juvenile reciprocal situation, There were hearings that were held and it was based on a court order from the state of Georgia and he was brought back, It was my understanding, and I'm asking for the file, since I wasn't the district attorney at that time, to confirm that with the Court, However, the State of Alabama was required to go get Mr. Davis, even though, he knew there was probably going to be some further issues to be tried before this Court, at sometime concerning this matter;

Number Two, the argument of the State would be that there is some question in the State's mind as to whether or not youthful offender was ever intended to deal with the question of capital offense;

Number Three, I think clearly the seriousness of the nature of this crime and the obvious intention of the Defendant to leave the jurisdiction of the court, clearly shows that he is not entitled to youthful offender

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and we would ask the Court to deny it,

MR. EDWARDS: May we reply?

THE COURT: Yes, sir,

MR, EDWARDS: I realize that Mr. Hill was not the district attorney at that time, The record will recite those who were involved would testify to the fact that this young man did go to Georgia, but on a voluntary basis on our part, We went to Georgia, we subjected him to the jurisdiction of the Georgia officials, I can stand here and tell this Court that, " No, we didn't want to come back and immediately come before the Coosa County people over here," There had been so much publicity and there was such an air over there, that we, frankly, felt it was in the best interest, in this young mans best interest, in his best interest , not to come back over here, We did, however, turn him over to the Georgia authorities, He was placed in a detention center and at such time as the Georgia officials looked at the matter he was then sent back to Coosa County, that is correct, But there was not an intentional running If he had wanted to run, he had Plenty opportunity to leave and never show back up here at this court again, absolutely,

As far as the youthful offender statute being applicable to capital offenses, there is no case law, there is nothing that would tell you anymore that it is than it is not, So I think, that is not an appropriate argument,

THE COURT: All right, Gentlemen, thank you, **The Court denies the Defendant youthful offender status in cases CC 79-08; CC 79-09; CC 79-10 and CC 79-12**

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The Court basis its denial on the following:

Defendant is charged by indictment, among other felonies of robbery and, in the course of said robbery, intentionally killing Mrs, Avis Alford, which crime in itself is serious, vicious and heinous, The Defendant absconded from the jurisdiction of the Court, Now, part of this is based on hearsay and that's within the law, within the discretion of the Court, The Defendant absconded from the jurisdiction of this Court to the State of Georgia and subsequently was returned to the jurisdiction of this Court by due process of law, The Court finds that the Defendant, while in the state of Georgia, confessed and acknowledged doing the act and committing the crime as charged in the indictments.

This Court is of the judgment that the Youthful Offender Act is not applicable to capital felony cases, However, in an abundance of caution, this Court did allow the Defendant all of the privileges of the Youthful Offender Act,

The Court will now proceed and the Court hands the defendant and his counsel a copy of this order,

(WHEREUPON, Counsel for Defendant requested a recess to study the above mentioned order, The Court granted said request; Afterwhich, the proceedings were resumed as follows:)

MR. SIMS: We respectfully except to the Court's Order on the following ground:

THE COURT: That is, the Youthful Offender Denial Order,

MR, SIMS: Right, the Youthful Offender Denial Order, Number one, there in nothing contained in the

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Probation Officer's Report concerning any alleged confession or statement made while in the state of Georgia and that there has been no evidence offered before the Court in this matter and, therefore, the order denying trial as youthful offender has been made upon facts which have not been proven in open court or contained in the Probation Officer's Report,

MR. EDWARDS: The second ground that there has been no evidentiary hearing on the statement referred to in the Court's Order and further, that the Order is now a part of the record; is available for public examination; is available for dissemination through the press; it is highly prejudicial to this defendant in his ability to obtain a fair trial,

MR, HILL: Could the record reflect that the Court has made an independent investigation in this matter as to whether or not to grant youthful offender and, also, Judge, the State would be willing to stipulate, at this time, and enter an agreement with Defense Counsel, that the Order entered by the Court can be sealed by whatever means Mr, Edwards or Mr, Sims would feel necessary to protect the interest of their client, We would have no objection that the Order be sealed from public view until this case is heard in its entirety,

MR, EDWARDS: Judge, I certainly think that would be appropriate, I believe the damage has already been done in terms of the presence of non-court officers in the courtroom today and possibly the press,

THE COURT: If they have, you've told them, I want that

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put in the record, Mr, Edwards: The order was read, Judge, The Court read the order,

THE COURT: Yes, sir,

MR, EDWARDS: And I'm speaking in no voice any louder that the Court did when the Order was read, So, this is something that we feel like is,,,

THE COURT: All, right, you've had your say, Let the record reflect that the Court, itself, did make an independent investigation prior to the Court ruling and making the Order and the Probation Officer's investigation supplemented the Court's Investigation

The Court further orders that said Order sealed and retained in the Circuit Clerk's Office subject to further orders of the Court,

Bring the Defendant forward, I am going to arraign him,

(WHEREUPON, the Defendant approached the Bench in the presence of his counsel, Afterwhich, the proceedings resumed as follows:)