

FILED
IN COURT OF CRIMINAL APPEALS
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
STATE OF OKLAHOMA

NOV 15 2005

JAMES ROBERT BONOMELLI,

) MICHAEL S. RICHIE
) CLERK

Appellant,

NOT FOR PUBLICATION

v.

) Case No. F 2004-161
)
)
)
)
)

THE STATE OF OKLAHOMA,

Appellee.

SUMMARY OPINION

A. JOHNSON, JUDGE:

Appellant, James Robert Bonomelli, was convicted after a jury trial of three counts of a five count Information before the Honorable C. William Stratton, Associate District Judge, in Comanche County Case No. CF-2002-413.¹ Bonomelli was convicted of, count two, possession of child pornography in violation of 21 O.S.2001, § 1024.2, count three, felonious possession of a firearm in violation of 21 O.S.2001, § 1283, and count five, felonious possession of marijuana in violation of 63 O.S.2001, § 2-402, all after former conviction of two or more felonies.² The jury set punishment at forty (40) years imprisonment and a \$5,000 fine, twenty (20) years imprisonment and a \$10,000 fine, and forty (40) years imprisonment and a \$10,000 fine, respectively. The trial court sentenced accordingly and ordered that the

¹ Bonomelli was also charged with, count one, solicitation of a minor and count four, possession of a firearm while committing a felony.

sentences be served consecutively. Bonomelli has perfected his appeal to this Court.

Bonomelli raises the following propositions of error in support of his appeal:

1. The trial court denied adequate time to prepare a defense by denying Appellant's motion for continuance, resulting in state-induced ineffective assistance of counsel at trial.
2. The sentences imposed against Mr. Bonomelli are excessive and should be favorably modified.

After thorough consideration of Bonomelli's propositions of error and the entire record before us on appeal, including the original record, transcripts, and briefs, we have determined that the judgment of the trial court should be affirmed and the sentence imposed should be modified.

In reaching our decision, we find in proposition one that the trial court did not abuse its discretion in failing to grant a continuance. *Ochoa v. State*, 1998 OK CR 41, ¶ 28, 963 P.2d 583, 595. We further find that Bonomelli has failed to show that this failure to grant a continuance deprived him of effective assistance of counsel. Bonomelli has not shown that he was prejudiced by the trial court's actions.

In proposition two, Bonomelli argues that the sentence imposed below is excessive and should be modified. We agree. By ordering the sentence imposed in each of the counts to run consecutively, the trial judge sentenced

² The State alleged that Bonomelli had three prior convictions; two for illegal distribution of marijuana and one for illegal distribution of amphetamine.

Bonomelli to 100 years' imprisonment, effectively a life term for this 38-year-old Appellant. We find that sentence, under the facts of this case, to be excessive and order the sentence imposed in each count to run concurrently, each with the others, for a total sentence of forty years' imprisonment. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149 n. 3.

DECISION

The judgment of the District Court is **AFFIRMED** and the sentence is **MODIFIED** to run concurrently. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2004), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

APPEARANCES AT TRIAL

KATHLEEN FLANAGAN
310 N. 5TH
P.O. BOX 36
WALTERS, OK 73572
ATTORNEY FOR DEFENDANT

ROY CALVERT
ASSISTANT DISTRICT ATTORNEY
COMANCHE COUNTY COURTHOUSE
315 SOUTHWEST 5TH STREET
LAWTON, OK 73501
ATTORNEY FOR THE STATE

OPINION BY: A. JOHNSON, J.

CHAPEL, P.J.: Concurs

LUMPKIN, V.P.J.: Concurs in Results

C. JOHNSON, J.: Concurs

LEWIS, J.: Concurs

APPEARANCES ON APPEAL

ANDREAS T. PITSIRI
APPELLANT DEFENSE COUNSEL
INDIGENT DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
OKLAHOMA ATTORNEY GENERAL
JENNIFER B. MILLER
ASSISTANT ATTORNEY GENERAL
2300 N. LINCOLN BLVD., SUITE 112
OKLAHOMA CITY, OK 73104
ATTORNEYS FOR APPELLEE