

SEP - 3 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

CRYSTAL DAWN CAMPBELL,)
)
 Appellant,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. C-2002-1525

SUMMARY OPINION

CHAPEL, JUDGE:

Crystal Dawn Campbell was charged by information in Hughes County, Case No. CF-2001-108, with Enabling Child Abuse, under 10 O.S.2001, § 7115. On May 14, 2002, Campbell entered a blind *Alford* plea of guilty in the case, before the Honorable Gregg M. Smith. After a sentencing hearing, the Honorable Gregg M. Smith sentenced Campbell to imprisonment for twenty-five (25) years. She is now properly before this Court on a petition for certiorari, seeking to withdraw her guilty plea or have her sentence modified.

Campbell raises the following proposition of error:

Based upon all the facts and circumstances of Petitioner's case, this Court should allow Ms. Campbell to withdraw her *Alford* plea of guilty and proceed to trial or, in the alternative, modify the sentence.

Although Campbell seeks to withdraw her plea, she does not allege any particular errors in the way her plea was entered, and the record establishes that she was properly informed regarding the rights she was waiving and the maximum penalty for her conviction. Although Campbell's plea form alone does

not contain an adequate “factual basis” to support her plea, this is to be expected with an *Alford* plea.¹ Campbell does not deny that the total evidence before the trial court provided an adequate factual basis for its acceptance of her plea.² Hence Campbell will not be allowed to withdraw her plea.

Nevertheless, this Court finds that based upon the specific factual circumstances of this case, Campbell’s sentence should be modified to imprisonment for ten (10) years.³

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that although reversal of Campbell’s conviction is not required by the law and evidence, her sentence should be modified.

Decision

Campbell’s **CONVICTION** for Enabling Child Abuse is **AFFIRMED**, but her **SENTENCE** is **MODIFIED** to imprisonment for ten (10) years.

¹ An *Alford* plea, by definition, is one in which the defendant continues to profess innocence. See *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (holding that where State presented strong factual evidence of guilt, defendant’s guilty plea was not invalidated by fact that he continued to profess innocence at time of plea); see also *Stewart v. State*, 1977 OK CR 265, 568 P.2d 1297, 1300 (noting that “a desire to lessen the punishment is a constitutionally valid reason for entering a plea of guilty”) (citing *Alford*).

² Campbell acknowledges in her brief that the factual basis for a plea can be found in sources other than the defendant’s own admissions, including within a preliminary hearing transcript. See *Wester v. State*, 1988 OK CR 126, 764 P.2d 884, 885 (cited in Campbell’s brief).

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NO RESPONSE REQUIRED

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR IN PART/DISSENT IN PART
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART
STRUBHAR, J.: CONCUR

³ See 21 O.S.2001, § 3001.1; 22 O.S.2001, § 1066; *Stewart*, 568 P.2d at 1300 (modifying defendant's sentence from 10 years to 5 years based upon "the interest of justice").

LUMPKIN, JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to deny certiorari and affirm the validity of the blind plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). However, I cannot find a basis in law or fact for the decision to modify the sentence. The Petitioner understood her plea was a blind plea and she was subject to receiving a sentence within the range of punishment under the statute. I have more trust in the trial judge in this case making the correct decision, having viewed the Petitioner and heard the evidence presented, than I do the ability of this Court to determine the appropriate sentence. The sentence entered, while not a minimum sentence, is not the maximum sentence possible. It certainly complies with our review criteria set out in *Rea v. State*, 34 P.3d 148 (Okla. Cr. 2001). Judge Smith is an experienced, fair and proficient judicial officer. I find his decision supported by the law and facts in this case and would deny certiorari, thus affirming both the judgment and sentence.

LILE, VICE PRESIDING JUDGE: CONCURS IN PART/DISSENTS IN PART

The trial court did not abuse its sentencing discretion, and we should affirm the sentence.

