

JUL 10 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

JOHN DOUGLAS CLARK,)	
)	
Petitioner,)	<u>NOT FOR PUBLICATION</u>
)	
v.)	Case No. C-2002-1188
)	C-2002-1190 &
THE STATE OF OKLAHOMA,)	C-2002-1191
)	
Respondent.)	

**SUMMARY OPINION GRANTING CERTIORARI IN PART
AND MODIFYING SENTENCE**

LUMPKIN, J.:

Petitioner pled guilty and was convicted in Garfield County District Court of the following crimes, in three separate cases, all after former conviction of two or more felonies: [**Case No. CF-2000-41**] Possession of CDS with Intent to Distribute (Count I), Maintaining a Vehicle Used for the Keeping or Selling of CDS (Count II), Driving Under Suspension (Count III), and Unlawful Possession of Paraphernalia (Count IV); [**Case No. CF-2000-53**] Possession of CDS within 1,000 Feet of a Public Park (Count I), Possession of Firearm During Commission of a Felony (Count II), Possession of Firearm After Felony Conviction (Count III), and Unlawful Possession of Paraphernalia (Count IV); and [**Case No. CF-2001-594**] Two counts of Shooting with Intent to Kill (Counts I and II), Possession of Firearms After Conviction or During Probation (Count III), Unlawful Use of Police Radio (Count IV), Possession of CDS (Count V), and Possession of Sawed-Off Shotgun/Rifle (Count VI).

Prior to sentencing, Petitioner, through counsel, filed a motion to withdraw his plea, claiming his guilty plea was unknowingly and involuntarily entered. Following a September 13, 2002 hearing on that motion, the trial court denied the same. Thereafter, the trial court sentenced Petitioner as follows: twenty (20) years; twenty (20) years; one year; one year; twenty (20) years; twenty (20) years; twenty (20) years; one (1) year; thirty (30) years; thirty (30) years; thirty (30) years; ten (10) years; ten (10) years; and ten (10) years. The sentences, totaling 223 years, were ordered to run consecutively. Petitioner now appeals from the denial of his motion to withdraw plea.

Petitioner raises the following propositions of error in this appeal:

- I. The trial court erred by accepting his guilty plea on Counts I and II in Case CF-2000-41, and Counts I and II in Case CF-2001-594, Counts I and II because there was insufficient evidence to support the charge;
- II. Petitioner has endured multiple punishments requiring the dismissal of counts I and II in CF-2000-41 and counts II and III in CF-2001-594; and
- III. Petitioner's guilty pleas were not knowingly, intelligently, and voluntarily entered into and require a withdrawal.

After thoroughly considering these propositions and the entire record before us, we grant relief, as set forth below.

With respect to proposition one, we find there was sufficient evidence for the trial court to accept a plea of guilty on Count I of CF-2000-41 and Counts I and II of CF-2001-594. *Spuehler v. State*, 1985 CR 132, ¶ 7, 709 P.2d 202, 203-04. However, we find the evidence is insufficient to support his conviction

for Count II in CF-2000-41, i.e., Maintaining a Vehicle Used for the Keeping or Selling of CDS. See 63 O.S.Supp.1999, § 2-404(A)(6); *Howard v. State*, 1991 OK CR 76, 815 P.2d 679, 683 (requiring certain evidence as “essential elements” for a conviction for maintaining).

With respect proposition two, we find the claim relating to CF-2000-41 is moot, as per proposition one. As to CF-2001-594, we find Petitioner was not subjected to double jeopardy or double punishment. *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126. With respect to the third proposition, we find Petitioner’s guilty plea was knowingly, intelligently, and voluntarily made. *King v. State*, 1976 OK CR 103, ¶11, 553 P.2d 529, 534-5.

DECISION

The judgments and sentences are hereby **AFFIRMED**, except that Petitioner’s conviction in Case NO. CF-2000-41 for Maintaining a Vehicle Used for the Keeping or Selling of CDS (Count II) is hereby **REVERSED** and **DISMISSED**. All sentences are to be served consecutively. This matter is therefore **REMANDED** for further proceedings consistently herewith.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY
THE HONORABLE JOHN W. MICHAEL, DISTRICT JUDGE

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OPINION BY: LUMPKIN, J.
JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
CHAPEL, J.: CONCUR IN PART/DISSENT IN PART
STRUBHAR, J.: RECUSE

RE

CHAPEL, JUDGE, CONCURS IN PART/DISSENTS IN PART:

I would modify the sentences to run concurrently.