

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RODNEY GENE CULLINS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

Case No. C-2010-1113

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
SEP 08 2011

SUMMARY OPINION GRANTING CERTIORARI IN PART

C. JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

On April 28, 2010, Petitioner, Rodney Gene Cullins, entered negotiated pleas of guilty to several drug-related crimes in Delaware County District Court, Case No. CF-2010-29A: Count 1, Manufacturing Methamphetamine (63 O.S.Supp.2005, § 2-401(G)); Count 2, Maintaining a Place Where Controlled Drugs are Kept (63 O.S.Supp.2004, § 2-404)); Count 3, Possession of Methamphetamine (63 O.S.Supp.2009, § 2-402); Count 4, Possession of Marijuana, Subsequent Offense (63 O.S.Supp.2009, § 2-402); and Count 5, Possession of Drug Paraphernalia (63 O.S.Supp.2004, § 2-405). The felony crimes (Counts 1-4) were charged After Conviction of Two or More Non-Drug-Related Felonies (21 O.S.Supp.2002, § 51.1(C)). Pursuant to the plea agreement, Petitioner was enrolled in the Drug Court program. Petitioner was advised that failure to complete the program would result in the imposition of sentences negotiated in the plea agreement. The State subsequently moved to terminate Petitioner from the Drug Court program. At a hearing held October 13, 2010, the Honorable Robert G. Haney, District Judge, granted the State's

request and sentenced Petitioner, per the original agreement, as follows: Count 1, life imprisonment and a \$50,000 fine; Counts 2 and 3, life imprisonment and \$1000 fine; Count 4, ten years imprisonment and a \$1000 fine; and Count 5, a \$100 fine. Pursuant to the original plea agreement, all sentences were ordered to be served consecutively to one another. Petitioner filed an Application to Withdraw Guilty Pleas on October 22, 2010. At a hearing held November 10, 2010, the district court denied that request. This appeal followed.

Petitioner raises the following propositions of error:

1. Petitioner's convictions for both manufacturing methamphetamine and possessing methamphetamine (Counts 1 and 3), and possession of both methamphetamine and marijuana (Counts 3 and 4) constitute double jeopardy or double punishment.
2. Petitioner should be allowed to withdraw his plea to Count 4 (Possession of Marijuana) due to incorrect advice on the statutory sentencing range.
3. Petitioner's sentence on Count 1 should be modified to vacate the fine, which is not authorized by law.
4. Petitioner's sentences are excessive.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and Petitioner's brief, we grant certiorari as to Proposition 3, but otherwise affirm. As to Proposition 1, these arguments have been waived by Petitioner's failure to raise them below. Double-punishment claims are largely fact-driven, and the record is so devoid of factual development that we are unable to review these claims even for plain error. Rule 4.2(B), *Rules of the Oklahoma Court of Criminal*

Appeals, 22 O.S., Ch. 18, App.; *Head v. State*, 2006 OK CR 44, ¶ 9, 146 P.3d 1141, 1144; *Walker v. State*, 1998 OK CR 14, ¶ 3, 953 P.2d 354, 355. Proposition 1 is therefore denied.

As to Proposition 2, Petitioner pled guilty to a subsequent-offense marijuana-possession charge, after conviction of multiple prior non-drug-related felonies. The trial court properly advised him of the applicable sentencing range on Count 4. 21 O.S.Supp.2002, § 51.1(C); *King v. State*, 1976 OK CR 103, ¶ 11, 553 P.2d 529, 535. Proposition 2 is denied.

As to Proposition 3, the \$50,000 fine authorized for a first offense in Count 1 (*see* 63 O.S.Supp.2005, § 2-401(G)), is no longer available when sentence is enhanced pursuant to 21 O.S.Supp.2002, § 51.1(C). *Coates v. State*, 2006 OK CR 24, ¶ 6, 137 P.3d 682, 684-85. However, as Petitioner concedes, the court had the authority to impose a fine of up to \$10,000 for any felony. 21 O.S.2001, § 64(B). Accordingly, the fine on Count 1 should be **MODIFIED** from \$50,000 to \$10,000.

Finally, as to Proposition 4, given the trial court's thorough colloquy with Petitioner on the ramifications of his agreement to the plea terms, we cannot say the sentences imposed are shocking to the conscience. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. Proposition 4 is therefore denied.

DECISION

The Petition for Writ of Certiorari is **GRANTED** as to Proposition 3, and the fine in Count 1 is hereby **MODIFIED** to \$10,000.00. In all other respects, the trial court's order denying Petitioner's motion to withdraw plea, and the Judgment and Sentence of the trial court, are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF DELAWARE COUNTY
THE HONORABLE ROBERT G. HANEY, DISTRICT JUDGE

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OPINION BY C. JOHNSON, J.

A. JOHNSON, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
SMITH, J.: CONCUR

RB