

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MAR 2 2009
MICHAEL S. RICHIE
CLERK

ALAN DANIELS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

Case No. C-2008-593

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SUMMARY OPINION DENYING CERTIORARI

MICHAEL S. RICHIE
CLERK

A. JOHNSON, VICE PRESIDING JUDGE:

On July 14, 2005, Petitioner Alan Daniels entered a guilty plea in the District Court of Delaware County, Case No. CF-2005-183, to Unlawful Cultivation of Marijuana in violation of 63 O.S.2001, § 2-509.¹ The Honorable Alicia Littlefield accepted Daniels's plea, deferred sentencing for five years, and ordered Daniels to serve ten days in jail and pay a \$1,000 fine. On January 9, 2006, the State filed a Motion to Accelerate Deferred Sentence. On February 14, 2006, the District Court heard the State's motion to accelerate and found that Daniels had violated the terms and conditions of his deferral. The district court sustained the State's motion and sentenced Daniels to life imprisonment. Over the next two years, Daniels sought to withdraw his plea and appeal the validity of the acceleration order.² Daniels's motion to withdraw his plea was

¹ Under the terms of the plea agreement, Count 2 - Possession of a Firearm While Committing a Felony and Count 3 - Unlawful Possession of Drug Paraphernalia were dismissed by the State.

² Daniels obtained two separate appeals out of time, eventually culminating in the perfection of the instant appeal. See *Daniels v. State*, Case No. PC-2006-404 and Case No. PC-2008-395.

finally heard on June 12, 2008. The district court upheld the validity of Daniels's plea and denied his motion. Daniels appeals the district court's order and asks this Court to issue a Writ of Certiorari allowing him to withdraw his plea and proceed to trial. In the alternative, Daniels asks that his case be remanded with instructions to vacate and/or favorably modify the sentence imposed.

This case raises the following issues:

- (1) whether the evidence was sufficient to prove that Daniels committed the alleged violations of his probation;
- (2) whether Daniels's plea was knowingly and intelligently entered; and
- (3) whether Daniels's sentence is excessive and should be modified.

We deny certiorari and affirm the Judgment of the district court. We find, however, that Daniels's sentence must be modified for the reasons discussed below.

1. The district court did not abuse its discretion in finding the evidence sufficient to prove that Daniels's conduct violated the protective order against him and that he violated the terms of his probation by violating the protective order and flunking his drug test. *See Lewis v. State*, 2001 OK CR 6, ¶ 7, 21 P.3d 64, 65.

2. The district court did not abuse its discretion in finding that Daniels's plea was knowingly and voluntarily entered. *See Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251.

3. "A sentence within the statutory range will be affirmed unless, considering all the facts and circumstances, it shocks the conscience of this Court." *Head v. State*, 2006 OK CR 44, ¶ 27, 146 P.3d 1141, 1148.

Daniels was accelerated to the maximum sentence (life imprisonment) after originally receiving a five-year deferred sentence for growing a 1.5 inch marijuana plant. The record is sufficient to prove that he violated the terms and conditions of his deferral. The sentence imposed, however, is far too severe in light of the circumstances of this case. Daniels's life sentence shocks our conscience and must be modified to five years imprisonment.

DECISION

The Petition for a Writ of Certiorari is **DENIED**. The Judgment of the district court is **AFFIRMED**. The matter is remanded to the district court with instructions to **MODIFY** Daniels's sentence to five years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF DELWARE COUNTY
THE HONORABLE ALICIA LITTLEFIELD, SPECIAL JUDGE

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OPINION BY: A. JOHNSON, V.P.J.
C. JOHNSON, P.J.: Concur in Part, Dissent in Part
LUMPKIN, J.: Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

RB