

JUL 14 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

WILLIAM EARL DREW,)	
)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. F 2005-651
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

C. JOHNSON, JUDGE:

Appellant, William Earl Drew, was convicted by a jury of Shooting with Intent to Kill, in violation of 21 O.S., § 652, in Tulsa County District Court, Case No. CF 2004-4368. Jury trial was held before the Honorable Rebecca Nightingale, District Judge, on June 21st and 22nd, 2005. The jury found Mr. Drew guilty and set punishment at twelve (12) years imprisonment. Judge Nightingale sentenced Mr. Drew in accordance with the jury's verdict on July 8, 2005. From the Judgment and Sentence imposed, Appellant filed this appeal.

Mr. Drew raises three propositions of error:

1. The trial court erred by denying the requested sentencing instruction;
2. Admission of prejudicial other crimes evidence deprived Mr. Drew of the due process right to a fair trial;
3. The evidence establishes that Mr. Drew was denied effective assistance of counsel at trial and therefore this Court should grant him a new trial.¹

¹ The third proposition of error is set forth in Mr. Drew's *Pro Se* Supplemental Brief.

After thorough consideration of the propositions raised, the transcripts, Original Record, briefs, citations and arguments of the parties, we find Mr. Drew's conviction for Shooting with Intent to Kill should be affirmed, but the sentenced modified for the reasons set forth below.

Mr. Drew's counsel requested the jury be instructed on the eighty-five percent (85%) rule and the trial court refused to so instruct. During deliberations, the jury sent out a note inquiring about what percentage of the sentence imposed Mr. Drew would be required to serve. Trial counsel again requested the jury be instructed on the eighty-five percent (85%) rule, and the request was denied. Recently, in *Anderson v. State*, 2006 OK CR 6, ¶ 25, 130 P.3d 273, we held "the 85% Rule is a specific and readily understood concept of which the jury should be informed, and which will not necessitate further explanation or justify further discussion of general parole issues and procedures." *Id.*

Accordingly, we find Proposition One has merit and requires modification of Mr. Drew's sentence to ten (10) years imprisonment.

In Proposition Two, we find the trial court properly admitted certain other crimes evidence to prove motive and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, and was not admitted to mislead the jury. 21 O.S.2001, § 2403. The trial court did not improperly admit other crimes evidence about which the State had not given sufficient notice. Many of the instances complained of do not even constitute other crimes evidence. The trial court did not abuse its

discretion by allowing this evidence. *Jones v. State*, 2006 OK CR 5, ¶ 48, 128 P.3d 521, 540; *see also Guy v. State*, 1989 OK CR 35, ¶¶ 11-12, 778 P.2d 470, 474 (other crimes evidence which is apparent only to defense counsel does not fall within the prohibition against admission of other crimes evidence); *Thompson v. State*, 1985 OK CR 103, 705 P.2d 188, 191 (informant's testimony that defendant was afraid someone was "narcing" on her was not evidence of other crimes but only possibly implication of another crime).

In Proposition Three, we find Mr. Drew has failed to prove his counsel's performance fell below the standard of reasonableness required by prevailing professional norms and that his challenged actions could not be considered sound trial strategy. *Glossip v. State*, 2001 OK CR 21, ¶ 11, 29 P.3d 597, 600; *Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 2064-2066, 80 L.Ed.2d 674 (1984).

DECISION

Appellant's conviction for Shooting with Intent to Kill in Tulsa County District Court, Case No. 2004-4368, is hereby **AFFIRMED** and his sentence is **MODIFIED** from twelve (12) years to ten (10) years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the MANDATE is ORDERED issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE REBECCA NIGHTINGALE, DISTRICT JUDGE

APPEARANCES AT TRIAL

MR. RICK COUCH
ASST. PUBLIC DEFENDER
423 SOUTH BOULDER, SUITE 300
TULSA, OK 74103
ATTORNEY FOR DEFENDANT

APPEARANCES ON APPEAL

PAULA ALFRED
ASST. PUBLIC DEFENDER
423 SOUTH BOULDER, SUITE 300
TULSA, OK 74103
ATTORNEY FOR APPELLANT

MR. JAMES DUNN
ASST. DISTRICT ATTORNEY
TULSA COUNTY COURTHOUSE
500 SOUTH DENVER, SUITE 900
TULSA, OK 74103
ATTORNEY FOR THE STATE

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
JENNIFER STRICKLAND
ASST. ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR STATE

OPINION BY: C. JOHNSON, J.

CHAPEL, P.J. :	CONCURS
LUMPKIN, V.P.J. :	CONCURS IN RESULTS
A. JOHNSON, J.:	CONCURS
LEWIS, J.:	CONCURS

rb