

SEP 12 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

RUSSELL DEWAYNE DYKES,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. F 2002-1035
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

LILE, VICE PRESIDING JUDGE:

Appellant, Russell DeWayne Dykes, was convicted, after a bench trial, of Assault and Battery on a Police Officer (Count 1) in violation of 21 O.S.Supp.1999, § 649(B), Possession of a Controlled Dangerous Substance (Methamphetamine) (Count 3) in violation of 63 O.S.Supp.1999, § 2-402, and Possession of a Controlled Dangerous Substance without a Tax Stamp Affixed (Count 5) in violation of 68 O.S.Supp.1999, § 450.8, in Creek County Case No. CF-2000-156, before the Honorable Joe Sam Vassar, District Judge. Judge Vassar sentenced Appellant to six (6) years and a \$100 fine on each count to run concurrently. Appellant as perfected his appeal to this Court.

Dykes raises the following propositions of error in support of his appeal:

1. The inadequate chain of custody and strong evidence that the alleged contraband evidence offered in support of counts 3 and 5 had been contaminated, altered, or tampered with, denied Mr. Dykes of his right to due process and a fair trial.

2. The State's evidence was in sufficient to support Appellant's conviction for possession of a controlled substance.
3. The sentence imposed by the trial court in each of counts 1 and 5 was in excess of the maximum sentence proscribed by statute, and must be set aside; or in the alternative modified as void.
4. Mr. Dykes sentence should be favorable modified to reflect the range of years orally pronounced by the trial court following conviction and the court's subsequent proper exercise of discretion by ordering the sentences to run concurrently.
5. The cumulative effect of all the errors addressed above deprived Appellant of a fair trial.

After thorough consideration of Appellant's propositions of error and the entire record before us on appeal, including the original record, transcripts, and briefs, we have determined that the judgments of the trial court shall be affirmed, the sentence in count three shall be affirmed, the sentences in counts one and five shall be modified as set forth below.

In reaching our decision, we find, in proposition one that sufficient chain of custody was established to render the evidence admissible. *McCarty v. State*, 1995 OK CR 48, 904 P.2d 110, 126. In proposition two, we find that, after reviewing the evidence in a light most favorable to the State, any reasonable fact finder could have concluded that Appellant committed the offenses for which he was convicted beyond a reasonable doubt. *See Spuehler v. State* 1985 OK CR 132, 709 P.2d 202, 203-04; *Jackson v. Virginia*, 433 U.S. 307, 324, 99 S.Ct. 2781, 2791-92, 61 L.Ed.2d 560 (1979).

In propositions three and four, we find that the trial court's imposition of sentence at the formal sentencing was correct; however, two of the sentences exceed the maximum term of years proscribed by statute. *See Dyer v. State*, 2001 OK CR 31, ¶ 4, 34 P.3d 652, 653 (any error in deviating from the original pronouncement was waived at formal sentencing). Therefore, the sentence for count three shall be modified to five years and the sentence for count five shall be modified to two years.

In proposition five, we find that no further relief need be granted based on a cumulative error analysis. *Woods v. State*, 1984 OK CR 24, ¶ 10, 674 P.2d 1150, 1154.

DECISION

The judgments of the district court shall be **AFFIRMED**. The sentence in count three shall be **AFFIRMED**. The term of imprisonment in the sentence for count one shall be **MODIFIED** to five years imprisonment. The term of imprisonment in the sentence for count five shall be **MODIFIED** to two years imprisonment.

APPEARANCES AT TRIAL

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OPINION BY: LILE, V.P.J.

JOHNSON, P.J.: CONCURS
LUMPKIN, J.: CONCURS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS

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