

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DONALD WAYNE FARINO,)
)
 Appellant,)
 vs.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. M-2014-235

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR - 3 2015

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LUMPKIN, VICE PRESIDING JUDGE:

The Appellant, Donald Wayne Farino, appeals to this Court from his misdemeanor Judgments and Sentences entered after a combined non-jury trial before the Honorable Mark R. Campbell, District Judge, in Case Nos. CM-2012-943 and CM-2012-944 in the District Court of Bryan County. In Case No. CM-2012-943, Appellant was convicted of Obtaining Cash By False Pretenses, and was sentenced to six months in the Bryan County Jail. In Case No. CM-2012-944, Appellant was convicted of Petit Larceny, and was sentenced to six months in the Bryan County Jail. The sentences were ordered to run concurrently.

In Proposition I, Appellant claims that, because he never waived his right to a jury trial in these cases, this Court must reverse his convictions. The State concedes there is no record of a valid waiver of Appellant's right to a jury trial. Therefore, Appellant's Judgments and Sentences must be reversed and remanded for a new trial based upon Proposition I, and we need not address his other propositions.

ANALYSIS

The right of trial by jury shall be and remain inviolate, except in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars (\$1,500.00). Okla. Const. art. II, § 19. The crime of Obtaining Cash By False Pretenses is punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. 21 O.S.2011, § 1541.1. The crime of Petit Larceny shall be punishable by a fine of not less than Ten Dollars (\$10.00) or more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment. 21 O.S.2011, § 1706. Appellant was thus entitled to a jury trial in both Case Nos. CM-2012-943 and CM-2012-944.

An accused may waive his constitutional right to a jury trial, but only if there is a clear showing that such waiver was competently, knowingly and intelligently given. *Valega v. City of Oklahoma City*, 1988 OK CR 101, ¶ 5, 755 P.2d 118, 119. A valid waiver of a jury trial requires the consent of the accused, the prosecutor and the trial judge. *Id.* A record showing an intelligent, competent and knowing waiver of a jury trial is mandatory and anything less is not a waiver. *Id.* Both the State and Appellant agree, and this Court finds, that neither the non-jury trial transcript nor the original record contains any waiver of the right to a jury trial.

DECISION

The Judgments and Sentences of the District Court of Bryan County in Case Nos. CM-2012-943 and CM-2012-944 are **REVERSED** and **REMANDED** for a new

trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY
THE HONORABLE MARK R. CAMPBELL, DISTRICT JUDGE

APPEARANCES AT TRIAL

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

RA/F

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