

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

DERRICK ANDRE FIELDS, )  
 )  
 Appellant, )  
 v. )  
 STATE OF OKLAHOMA )  
 )  
 Appellee. )

**NOT FOR PUBLICATION**

Case No. F-2009-466

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

APR 02 2010

**MICHAEL S. RICHIE**  
CLERK

**SUMMARY OPINION**

**LUMPKIN, JUDGE:**

Appellant Derrick Andre Fields was tried by jury and convicted of Shooting with Intent to Injure (21 O.S.Supp.2006, § 645), Case No. CF-2007-410, in the District Court of Garvin County. The jury recommended as punishment nine (9) months in the county jail. The trial court initially sentenced Appellant to five (5) years in prison, all suspended.<sup>1</sup> However, on the basis of an oral joint application for modification, the trial court vacated the five (5) year sentence and sentenced Appellant to six (6) months in the county jail, to be served the first weekend of each month. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following proposition of error in support of his appeal:

- I. The sentence imposed was not lawful.

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<sup>1</sup> The limited record presented to this Court does not set out the basis for this initial sentence, i.e. the record on appeal does not contain a felony information, trial transcript or any information regarding the underlying facts in this case. The Appellant's designation of record only designated the transcript of the sentencing conducted on April 27, 2009.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined the trial court imposed a sentence which was not authorized by law and the case should be remanded to the trial court for resentencing in accordance with this opinion.<sup>2</sup>

A district court may suspend a sentence in whole or in part, but may not impose a sentence different from that set by the jury. *Howell v. State*, 1981 OK CR 82, ¶ 9, 632 P.2d 1223, 1225.

[W]here the jury declare the punishment in their verdict within the limitations fixed by law, the district courts of this State must render a judgment according to such verdict and are without authority to modify the punishment assessed by the jury in pronouncing judgment upon the conviction. In such a case, authority for judicial modification of the sentence is vested exclusively in this Court. See, 22 O.S.1971, §§ 926 and 1066.

*Luker v. State*, 1976 OK CR 135, ¶ 12, 552 P.2d 715, 719, citing *Bean v. State*, 77 Okl.Cr. 73, 138 P.2d 563 (1943).

The sentence of nine (9) months in the county jail recommended by the jury in this case was within applicable statutory range. See 21 O.S.2001, § 645. Therefore, the trial court was without authority to reduce the sentence to six (6) months in the county jail.

Further, we note that Appellant was not entitled to weekend incarceration pursuant to 22 O.S.2001, § 991a-2 which provides for weekend incarceration in the county jail for "nonviolent felony offenders". Appellant's

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<sup>2</sup> We note that the State concedes the error in its brief on appeal, but not necessarily for the reasons advocated by Appellant.

conviction for shooting with intent to injure classifies him a violent felony offender. See 57 O.S.Supp.2008, § 571(2)(a); 21 O.S.2001, § 645.

Therefore, this case is remanded to the District Court for resentencing consistent with this opinion. See *Scott v. State*, 1991 OK CR 31, ¶ 14, 89, 808 P.2d 73, 77.

### DECISION

The Judgment is **AFFIRMED**. The Sentence is **VACATED** and the case is **REMANDED** to the District Court for **RESENTENCING** consistent with this opinion. 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 GARVIN COUNTY  
THE HONORABLE CANDACE L. BLALOCK, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

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**OPINION BY: LUMPKIN, J.**  
C. JOHNSON, P.J.: CONCUR  
A. JOHNSON, V.P.J.: CONCUR  
LEWIS, J.: CONCUR IN RESULT

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