

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

HENRY C. FLOWERS, JR.,)
)
 Appellant,)
)
 -vs-)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
No. F-2002-1428

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 08 2004

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

STRUBHAR, J.:

Appellant, Henry C. Flowers, Jr., was tried by jury in the District Court of Oklahoma County, Case No. CF-2001-2891, and was convicted of one count of False Declaration of Ownership to a Pawnbroker, After Former Conviction of Two or More Felonies. The jury recommended twenty (20) years imprisonment and the Honorable Ray C. Elliott, District Judge, sentenced Appellant accordingly. From this judgment and sentence, he appeals

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs of the parties, we affirm Appellant's conviction, but remand for resentencing. The following propositions of error were considered:

- I. The State presented insufficient evidence to prove beyond a reasonable doubt that Mr. Flowers made a false declaration of ownership to a "pawnbroker;" and
- II. The trial court's mistaken impression that it was without authority to run Mr. Flowers' sentence concurrently with another sentence that had been previously imposed constituted an abuse of discretion.

As to Proposition I, we are not persuaded by Appellant's argument that he did not commit the crime of making a false declaration to a pawnbroker because Michael Connelly, the Joe's Pawn Shop employee that conducted the pawn transaction, was not a licensed pawnbroker. It is apparent from the Oklahoma Pawnshop Act that the pawnshop license is to be obtained by the owner, which can be an individual, partnership, corporation, etc. See 59 O.S.2001, § 1504(A). There is no provision requiring each and every employee to be licensed. Consequently, we find the evidence was sufficient for a rational jury to find beyond a reasonable doubt that Appellant made a false declaration of ownership to a pawnbroker, i.e., Joe's Pawn Shop #3, Inc., a licensed pawnbroker under the Oklahoma Pawnshop Act. *Spuehler v. State*, 709 P.2d 202, 203-04 (Okl.Cr.1985).

As to Proposition II, we find the record shows the trial court was unsure it had the authority to run Appellant's sentence in this matter concurrently with another sentence that had been previously imposed. In *Walker v. State*, 780 P.2d 1181, 1183 (Okl.Cr.1989), we held that 22 O.S.1981, § 976 permitted the judge to "enter a sentence concurrent with any other sentence" at any time. The *Walker* court recognized that an abuse of discretion may occur if the judge is under a mistaken belief of the law that he is without authority to impose a concurrent sentence. Thus, we remand to the district court for further consideration in light of *Walker*.

DECISION

The Judgment of the trial court is **AFFIRMED** and the case **REMANDED**
for RESENTENCING.

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OPINION BY: STRUBHAR, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART
CHAPEL, J.: CONCUR

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LUMPKIN, JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgment of guilt and sentence in this case. However, I must dissent to the remand for the purpose of reconsideration of whether to run the sentence concurrent with a previously imposed sentence. I find no hesitation or lack of knowledge by Judge Elliott as to what his authority was in this case. The fact that he exercised his discretion in not stating he was running the sentences concurrently or consecutively, but allowing them to run by operation of law, does not mean he did not understand the sentencing options available. Judge Elliott is an experienced, competent judge. The record speaks for itself. I would affirm.