

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 28 2006

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

ROLLIE MACK FRANCIS,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

] NOT FOR PUBLICATION

] Case No. F-2005-1176

S U M M A R Y O P I N I O N

LEWIS, JUDGE:

Rollie Mack Francis, Appellant, was tried by jury in the District Court of Okmulgee County, Case No. CF-2005-3, and found guilty of the following crimes: Count 1, eluding or attempting to elude a police officer, 21 O.S.2001, § 540A (A); Count 2, running a roadblock, 21 O.S.2001, § 540B; Counts 3, 4, and 5, assault and battery with a dangerous weapon, 21 O.S.2001, § 645; Count 6, possession of a controlled substance (methamphetamine), 63 O.S.Supp.2004, § 2-402; Count 7, driving under the influence of alcohol or drugs, 47 O.S.Supp.2004, § 11-902 (A)(4); Count 8; driving while license is canceled, suspended, or revoked, 47 O.S.Supp.2004, § 6-303;

The jury found Appellant guilty after one (1) prior felony conviction and sentenced Appellant as follows: Count 1, ten (10) years imprisonment; Count 2, ten (10) years imprisonment; Count 3, fifty (50) years imprisonment; Count 4, life imprisonment; Count 5, life imprisonment; Count 6, thirty (30) years imprisonment; Count 7, one (1) year imprisonment and a fine of \$500.00;

Count 8, one (1) year imprisonment and a fine of \$500.00. The Honorable John Maley, District Judge, imposed judgment and sentence as follows: Counts 1, 2, 6, 7, 8, to run concurrently; Counts 3, 4, and 5 concurrent with each other and consecutive to Counts 1, 2, 6, 7, and 8, effectively sentencing Appellant to thirty (30) years imprisonment, with a consecutive term of life imprisonment. Mr. Francis appeals in the following propositions of error:

1. By Allowing The State To Use A Peremptory Challenge To Excuse A Minority Venireman Without First Establishing A Race-Neutral Reason, The Trial Court Denied Appellant An Impartial Jury Composed Of A Cross-Section Of His Community In Violation Of The Fifth, Sixth, And Fourteenth Amendments To The United States Constitution And Article II Sections 7 And 20 Of The Oklahoma Constitution.
2. Because The Jury Was Misinstructed On The Punishment For Count 8, The Court Must Modify The Sentence.
3. The Trial Court Erred By Denying Defense Counsel's Objection To Jury Instruction Nos. 23 And 24, Which Failed To Completely Inform The Jury Of The Punishment Options.
4. Under All The Facts And Circumstances Of This Case, Punishment Of Life Imprisonment Is So Excessive That This Court's Conscience Should Be Shocked.

In Proposition 1, Appellant concedes the prosecutor's reasons for excusing the prospective juror were race-neutral, but questions the District Court's ultimate determination that no purposeful discrimination occurred. We accord this finding great deference on appeal. Appellant has shown no reason to reverse the finding of the District Court. This proposition is denied. *Guy v. State*, 1989 OK CR 35, ¶¶ 24-26, 778 P.2d 470, 476.

Proposition 2 asserts fundamental error in the District Court's

instruction on the range of punishment for Count 8. The State confesses the error. Punishment in Count 8 is modified to a \$500.00 fine. 47 O.S.Supp.2004, § 6-303 (B).

In Proposition 3, Appellant argues the District Court erred when it failed to include the punishment option of a fine only in Count 1 (eluding an officer) and Count 2 (running a roadblock). Appellant was found guilty of these offenses after one (1) prior felony conviction and sentenced under the proper enhancement statute, 21 O.S.Supp.2001, § 51.1 (A)(3). The statute provides for a term of imprisonment not exceeding ten (10) years. It does not provide for the imposition of a fine. This proposition is denied. Cf. *Mitchell v. State*, 1987 OK CR 13, ¶ 2, 733 P.2d 412, 416 (Opinion on Rehearing); *Gaines v. State*, 1977 OK CR 259, ¶ 17, 568 P.2d 1290, 1294.

Appellant argues in Proposition 4 that his sentences are excessive. The sentences are severe, but within the authorized statutory range. The jury saw and heard Appellant's crimes, Appellant's explanation of the offenses, and his expressions of remorse. We cannot say the verdicts are without reason considering Appellant's prior history, the gravity of his conduct, and the threat it represented to innocent life and officers in the line of duty. This proposition is denied. *Rea v. State*, 2001 OK CR 28, 34 P.3d 148.

We modify the sentence in Count 8 to a fine of \$500.00 and remand this matter to the District Court with directions to enter a Judgment and Sentence *nunc pro tunc* conforming the Judgment and Sentence to the terms reflected in

the November 16, 2005 court minute, and striking the reference to a term of supervised probation.

DECISION

The Judgment and Sentence of the District Court of Okmulgee County is **MODIFIED** to a fine of \$500.00 in Count 8, and otherwise **AFFIRMED**. This case is **REMANDED** to the District Court with the directions to enter a new Judgment and Sentence *nunc pro tunc*:

Correcting the typographical error concerning Counts 1, 2, 6, 7, and 8 on page 2 of the December 16, 2005, Amended Judgment and Sentence and thereby conforming the Judgment and Sentence to the terms pronounced in open court and reflected in the November 16, 2005, court minute;

Deleting the terms "Supervised probation for two (2) years" on page 2 of the December 16, 2005, Amended Judgment and Sentence;

Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE JOHN MALEY, DISTRICT JUDGE

APPEARANCES AT TRIAL
CHARLES BARKER
P.O. BOX 998
OKMULGEE, OK 74447
ATTORNEY FOR DEFENDANT

THOMAS GUILIOLI
DISTRICT ATTORNEY
314 W. 7TH ST.
OKMULGEE, OK 74447
ATTORNEY FOR THE STATE

APPEARANCES ON APPEAL
MARK P. HOOVER
APPELLATE DEFENSE COUNSEL
OKLAHOMA INDIGENT DEFENSE SYSTEM
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
SANDRA D. RINEHART
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BLDG.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

OPINION BY LEWIS, J.
CHAPEL, P.J.: Concur
LUMPKIN, V.P.J.: Concur
A. JOHNSON, J.: Concur
C. JOHNSON, J.: Concur