

MAY - 7 2009

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

WILLIAM "BILL" GALLETLY,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. M 2007-0560

SUMMARY OPINION

A. JOHNSON, VICE PRESIDING JUDGE:

William Galletly, Appellant, was charged August 19, 2005, in the District Court of Delaware County, Case No. CM-2005-0816, with two counts of splitting contracts in violation of 61 O.S.2001, § 131. A jury found him guilty of one count, a misdemeanor, and not guilty of the second count. He was fined \$500.00 by the Honorable Robert G. Haney, District Judge, and appeals from that Judgment and Sentence.

This case presents the question whether a violation of the prohibition against splitting contracts in 61 O.S.2001, § 131 is a crime punishable under the general punishment provision of 21 O.S.2001, § 21.

Our standard of review on this question of law is de novo.

FACTS

The briefest summary of facts will suffice here. At the time of his conviction, Galletly served the City of Grove as City Manager. In the course of his job he oversaw the bidding process to let City contracts on two public construction projects referred to locally as "the white building project" and "the

Grove City Hall remodel project.” He was convicted of splitting the public construction contract into multiple partial contracts for the purpose of avoiding the requirements of the Competitive Bidding Act.¹

Galletly was charged with a misdemeanor offense of splitting of contracts in violation of 61 O.S.2001, § 131. At the relevant time the statute provided:

No contract involving sums in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be split into partial contracts involving sums not exceeding Twenty-five Thousand Dollars (\$25,000.00) for the purpose of avoiding the requirements of this act. All such partial contracts shall be void.

Because the trial court found this statute did not contain a specific criminal penalty for violating the prohibition against splitting contracts, it allowed the State to proceed under the general punishment provision of 21 O.S.2001, § 21.

That section directs:

Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor.

Galletly argues that at the time of his conviction Section 131 created a prohibition and provided the sole remedy, and for that reason a violation could not be punished under Section 21.²

We agree. Galletly’s conduct here did not amount to a crime under Section 131 at the time the alleged offense was committed. The statute did not specify that the acts prohibited therein constituted a misdemeanor or a felony.

¹ 61 O.S.2001, § 101, *et seq.*

² Galletly correctly notes that on November 1, 2006, the law was changed to provide a criminal penalty that made any person knowingly violating the provisions of Section 131 guilty of a misdemeanor.

And it did provide its own penalty for violation—a contract made in violation of the statute was void. Section 21 of Title 21 can be utilized only when no penalty for the violation is imposed within the statute. Penal laws are to be interpreted strictly against the State and liberally in favor of the accused. Words not found in the text of the statute will not be read in for the purpose of extending it or giving it an interpretation in conformity with a supposed policy. *State v. Stegall*, 96 Okl.Cr.281, 285, 253 P.2d 183 (1953).

Our holding renders Galletly's remaining issues moot.

DECISION

The Judgment and Sentence is **REVERSED and the matter is REMANDED with INSTRUCTIONS to DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE is ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF DELAWARE COUNTY
THE HONORABLE ROBERT G. HANEY, DISTRICT JUDGE

APPEARANCES AT TRIAL

JACK E. GORDON, JR.
Claremore, Oklahoma
COUNSEL FOR APPELLANT

BEN LORING
Assistant District Attorney
Delaware County
Jay, Oklahoma
COUNSEL FOR APPELLEE

APPEARANCES ON APPEAL

GLOYD L. MCCOY
600 Skyridge Trail
Oklahoma City, Oklahoma 73068
COUNSEL FOR APPELLANT

W. A. DREW EDMONDSON
Attorney General of Oklahoma
WILLIAM R. HOLMES
Assistant Attorney General
313 N. E. 21st St.
Oklahoma City, Oklahoma 73105
COUNSEL FOR APPELLEE

OPINION BY: A. JOHNSON, V.P.J.

C. JOHNSON, P.J.: Concur

LUMPKIN, J.: Concur

CHAPEL, J.: Concur

LEWIS, J.: Concur

RD