

SEP 17 2004

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

**MICHAEL S. RICHIE**  
**CLERK**

RODNEY LAMONT GARRETT, )  
 )  
 Appellant, )  
 v. )  
 STATE OF OKLAHOMA )  
 )  
 Appellee. )

**NOT FOR PUBLICATION**

Case No. F-2003-976

**RECEIVED**

SEP 17 2004

**FROM: COURT OF  
CRIMINAL APPEALS**

**SUMMARY OPINION**

**LUMPKIN, JUDGE:**

Appellant Rodney Lamont Garrett was tried in a non-jury trial for Conspiracy to Traffic Controlled Dangerous Substance (Count I) (63 O.S. 2001, § 2-408); Attempting to Traffic A Controlled Dangerous Substance (Count II) (63 O.S. 2001, § 2-415); Possession of a Firearm while Committing a Felony (Count III) (21 O.S. 2001, § 1287); and Transportation of Proceeds Derived from a Violation of the Controlled Dangerous Substances Act (Count IV) (63 O.S. 2001, § 2-503.1C), Case No. CF-2002-1267, in the District Court of Oklahoma County. Counts III and IV were dismissed. Appellant was found guilty in Counts I and II and sentenced to twenty (20) years imprisonment in each count, with ten (10) years in each count suspended. The sentences were ordered to run concurrently. It is from this judgment and sentence that Appellant appeals.

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

- I. Attempt to Traffic and Conspiracy to Traffic Require exactly the same elements of proof, and therefore convicting for both is double punishment.

- II.

After a 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 under the law and the evidence that reversal is not warranted but the sentenced should be modified.

Appellant's convictions and sentences for Conspiracy to Traffic Controlled Dangerous Substance and Attempting to Traffic A Controlled Dangerous Substance are not prohibited by 21 O.S.2001, § 11, as the acts were two separate crimes. *See Davis v. State*, 993 P.2d 124, 125-129 (Okl.Cr.1999).

The conspiracy conviction was based on evidence that prior to March 9, Appellant and Korey Nelson met and agreed to act as large-scale drug dealers. They subsequently met with a confidential informant (CI) who in turn met with undercover agents from the Oklahoma Bureau of Narcotics and Dangerous Drugs. The CI arranged a meeting for March 9 between the agents and Appellant. On the scheduled date, Appellant met the agents with the intent to purchase cocaine from them.

The attempt to traffic conviction is based on evidence that Appellant intended to purchase cocaine from the undercover agents. To that end, he met the agents, discussed quality and price of cocaine, and established he had the agreed upon price in cash. Further, Appellant agreed to follow the agents to another location to make the exchange of money for drugs. However, he was

prevented from completing the offense of trafficking by possession when he was the subject of a traffic stop by deputies of the Oklahoma County Sheriff's Office.

While there may have been some overlap in the evidence used to support each offense, the record shows the two crimes contained different elements that under the facts of the case constituted separate transactions. Further, we note that Appellant was properly charged in Count II pursuant to 63 O.S. 2001, § 2-415 and 21 O.S. 2001, § 42.

Finally, we find that pursuant to 63 O.S. 2001, § 2-415(D)(3) Appellant is not entitled to a suspended sentence. Therefore, we vacate the 10 year suspended sentence in each count and modify Appellant's sentences to ten years imprisonment in each count, with the sentences to run concurrently.

Accordingly, this appeal is denied.

**DECISION**

The Judgments are **AFFIRMED**. The Sentences are **MODIFIED** to ten (10) years imprisonment in each count, with the sentences to run concurrently.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY: LUMPKIN, J.**

JOHNSON, P.J.: CONCUR

LILE, V.P.J.: CONCUR

CHAPEL, J.: CONCUR IN RESULT

STRUBHAR, J.: CONCUR IN PART/DISSENT IN PART

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