

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

ARNULFO CAMPOS GONZALES,)
)
 Appellant,)
)
v.)
)
THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2018-989

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

JAN - 9 2020

JOHN D. HADDEN
CLERK

OPINION

ROWLAND, JUDGE:

Appellant Arnulfo Campos Gonzales appeals his Judgment and Sentence from the District Court of Haskell County, Case No. CF-2017-197, for Trafficking in Illegal Drugs (Count 1), in violation of 63 O.S.Supp.2015, § 2-415, Conspiracy to Traffic Methamphetamine (Count 2), in violation of 21 O.S.2011, § 421, and Conspiracy to Distribute Methamphetamine (Count 3), in violation of 21 O.S.2011, § 421. The Honorable Brian C. Henderson, Associate District Judge, presided over Gonzales’s jury trial and sentenced him, in accordance with the jury’s verdict, to twenty-five years imprisonment on Count 1, and ten years imprisonment on each of Counts 2 and 3. Judge

Henderson ordered the sentences to be served consecutively.

Gonzales raises the following issues on appeal:

- (1) whether he was denied effective assistance of counsel because of a conflict of interest;
- (2) whether he suffered double punishment for his convictions and sentences in Counts 2 and 3;
- (3) whether the search of his car producing the drug evidence violated the Fourth Amendment;
- (4) whether his jury was erroneously instructed on the elements of conspiracy;
- (5) whether defense counsel rendered ineffective assistance of counsel; and
- (6) whether the district court abused its discretion in ordering his sentences to be served consecutively.

We find relief is not required and affirm the Judgment and Sentence of the district court on Counts 1 and 2. Count 3, however, requires dismissal for the reasons discussed in Proposition 2, *infra*.

1. Conflict of Interest

Gonzales claims he was denied his Sixth Amendment right to effective assistance of counsel. He contends that defense counsel operated under an actual conflict of interest because he had previously represented his co-defendant/co-conspirator, Samantha

Johnson, who testified for the prosecution after entering a guilty plea under defense counsel's representation. Gonzales insists that an actual conflict existed because of his and Johnson's adverse positions and that he need not show the conflict adversely affected counsel's representation because he objected to defense counsel's representation at trial. He asks this Court to vacate his Judgment and Sentence and remand the matter to the district court for a new trial with conflict-free counsel or, alternatively, to remand the matter for an evidentiary hearing to determine whether an actual conflict existed and whether he was prejudiced by the conflict.

The record shows that between the direct and cross-examination of the prosecution's first witness, defense counsel made a record on Gonzales's dissatisfaction with his representation. On the heels of defense counsel's record, the prosecutor made a record concerning her witness, Samantha Johnson. The prosecutor noted that both attorneys had spoken with Johnson and that the prosecution anticipated that Johnson would implicate Gonzales in the conspiracy the State alleged against him. The prosecutor inexplicably chose that moment in the midst of trial "to make sure

that there's no conflict, or anything, with respect to the fact that these two were both represented by [defense counsel] but she has since pled." Defense counsel stated that he had spoken to Johnson and disagreed that her anticipated testimony would implicate his client in a conspiracy. The prosecutor countered that she and others were fairly certain that Johnson would in fact implicate Gonzales. The district court stated that Johnson's testimony was likely susceptible to different interpretations and asked defense counsel whether he was comfortable that there was no conflict. Defense counsel stated he was comfortable and the district court considered the potential conflict matter settled.

In *Holloway v. Arkansas*, 435 U.S. 475, 488, 98 S.Ct. 1173, 1180, 55 L.Ed.2d 426 (1978), the Court held that whenever a trial court improperly requires joint representation over timely objection, reversal is automatic. The Court stressed that the evil in cases of joint representation of conflicting interests "is in what the advocate finds himself compelled to *refrain* from doing." *Holloway*, 435 U.S. at 490, 98 S.Ct. at 1182 (emphasis in original). In *Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S.Ct. 1708, 1718, 64 L.Ed.2d 333 (1980), the Court

discussed potential, rather than actual, conflicts which inhere in almost every instance of multiple representation, concluding that the defendant who raises no objection at trial to multiple representation must have the opportunity to show that potential conflicts adversely affected his right to a fair trial. The Court held that “[i]n order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer’s performance.” *Id.* at 348, 100 S.Ct. at 1718 (footnote omitted). The Court made clear that “a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.” *Id.* at 349-50, 100 S.Ct. at 1719.

Conflict of interest cases frequently involve multiple representation of co-defendants with conflicting interests at a single trial. The right to assistance of counsel free of conflicting interests, however, is not limited to such cases. That guarantee extends to any situation in which a defendant’s counsel owes conflicting duties to the defendant/client and some other person. *Wood v. Georgia*, 450 U.S. 261, 268-72, 101 S.Ct. 1097, 1101-03, 67 L.Ed.2d 220 (1981);

United States v. Winkle, 722 F.2d 605, 609-10 (10th Cir. 1983); *Allen v. State*, 1994 OK CR 30, ¶ 11, 874 P.2d 60, 63. It is generally accepted that an actual conflict would arise where defense counsel is unable to cross-examine a government witness effectively because the attorney had also represented the witness. *E.g.*, *Winkle*, 722 F.2d at 609-10; *Ross v. Heyne*, 638 F.2d 979, 983 (7th Cir.1980); *United States v. Martinez*, 630 F.2d 361, 363-64 (5th Cir.1980); *United States v. Morando*, 628 F.2d 535, 536 (9th Cir.1980). *See also Ellis v. State*, 1990 OK CR 43, ¶ 11, 795 P.2d 107, 109.

The record shows that Gonzales was dissatisfied with defense counsel for several reasons, but defense counsel's prior representation of Johnson in this matter was not one of them. Therefore, in order for Gonzales to obtain relief based on this claim, he must show that his attorney's previous representation of Johnson adversely affected the adequacy of his representation. *Cuyler*, 446 U.S. at 349-50, 100 S.Ct. at 1718-19. We must be mindful in our analysis of the difference between an actual conflict verses merely a potential conflict. "An actual conflict of interest exists where the interests of an attorney and a defendant diverge with respect to a

material factual or legal issue or to a course of action.” *Livingston v. State*, 1995 OK CR 68, ¶ 11, 907 P.2d 1088, 1091–92. A mere possibility of a conflict of interest is insufficient to reverse a criminal conviction. *Burnett v. State*, 1988 OK CR 161, ¶ 12, 760 P.2d 825, 828.

Gonzales maintains that an actual conflict arose when Johnson entered a guilty plea to conspiring with Gonzales. She admitted guilt to being a party to an agreement with Gonzales to distribute/traffic drugs while he maintained his innocence ostensibly putting their positions at odds. The potential for conflict was undoubtedly present. Nevertheless, defense counsel’s representation of Johnson during her guilty plea did not result in an actual conflict because Johnson’s admission during that proceeding was of no consequence to counsel’s representation of Gonzales. That representation, in itself, did not necessarily affect counsel’s representation of Gonzales. The more difficult question is whether an actual conflict arose when defense counsel had to cross-examine Johnson as a witness for the prosecution during Gonzales’s trial. This Court has “found no actual conflict where defense counsel represented persons who pled guilty

to charges arising out of the same criminal episode as the appellant, and then became a key prosecution witnesses against the appellant.” *Id.*; *Sheppard v. State*, 1983 OK CR 143, ¶¶4-5, 670 P.2d 604, 606. The determinative inquiry is whether defense counsel was precluded from effectively examining his former client turned government witness because of information protected by the attorney-client relationship. *Livingston*, 1995 OK CR 68, ¶ 12, 907 P.2d at 1092.

There is no evidence in this record to support a finding that defense counsel was limited or otherwise compromised in his examination of Johnson because of his prior representation. Gonzales neither identifies any action by counsel to demonstrate his examination of Johnson was hindered by his former representation of her, nor has he shown that counsel actively represented conflicting interests during trial warranting reversal. The record shows that Johnson was not a strong witness for the prosecution and she vacillated during her testimony on the likelihood Gonzales knew there were any drugs in his car. She knew of no direct evidence implicating him.

Gonzales anticipates this Court may find only the appearance of a conflict because of an absence of evidence establishing his attorney's examination of Johnson was compromised. Accordingly, he asks this Court for an evidentiary hearing to investigate whether an actual conflict existed and whether he was prejudiced by the conflict. He maintains an evidentiary hearing is necessary because the record is unclear: 1) whether defense counsel obtained a waiver of attorney-client privilege from Johnson before trial so he could fully and completely cross-examine her; and 2) whether Gonzales would have waived his right to conflict-free counsel or objected to defense counsel's representation because of the conflict. The sole attachment to the motion is an affidavit from appellate counsel, expressing unspecified concerns that defense counsel was operating under an actual conflict of interest. This Court will order an evidentiary hearing only if "the application and affidavits . . . contain sufficient information to show this Court by clear and convincing evidence [that] there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence." Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title

22, Ch. 18, App. (2020). Gonzales's burden is a demanding one and the affidavit does not persuasively show that defense counsel had a conflict of interest. The trial record shows that defense counsel adequately represented Gonzales at all phases of the trial and cross-examined Johnson thoroughly when she testified. Because the record fails to establish clear and convincing evidence of a strong possibility that defense counsel was ineffective because of an actual conflict of interest, Gonzales's motion for an evidentiary hearing, as well as his claim of ineffective assistance of counsel, are denied.

2. Multiple Punishment

Gonzales claims he was punished twice for the same act when he was sentenced for two counts of conspiracy. He contends that his possession of the same methamphetamine served as the basis for the charges of conspiracy to traffic in illegal drugs and conspiracy to distribute methamphetamine in Counts 2 and 3. According to Gonzales, the evidence showed but one agreement/plan among the alleged conspirators concerning the methamphetamine. Therefore, the conspiracies were not separate and distinct and his convictions/sentences on Counts 2 and 3 violate the statutory

prohibition against multiple punishments for the same act under 21 O.S.2011, § 11.¹ The State defends the two sentences for Counts 2 and 3 by arguing that the conspiracy to traffic was complete when Gonzales agreed to take packages of methamphetamine in excess of twenty grams to Stigler and that the conspiracy to distribute occurred once Gonzales met with known drug sellers, Penny Chavez and Sharon Stevens, in Stigler, Oklahoma. This issue was preserved for review.

At sentencing, defense counsel argued that the two counts of conspiracy should merge because the two conspiracies were part and parcel of a single agreement to distribute methamphetamine in excess of twenty grams and therefore the two conspiracies should be treated as one crime. The State argued that a single agreement resulting in the commission of multiple crimes constituted separate conspiracies subject to separate punishments. The district court

¹ Section 11 provides in relevant part that:

[A]n act or omission which is made punishable in different ways by different provisions of this title may be punished under any such provisions, . . . but in no case can a criminal act or omission be punished under more than one section of law; and an acquittal or conviction and sentence under one section of law....

found the issue a “close call,” but ultimately sided with the prosecution and sentenced Gonzales to ten years on each count of conspiracy to run consecutively with each other.

We analyze claims raised under Section 11 by focusing on the relationship between the crimes, considering: (1) the particular facts of each case; (2) whether the facts set out separate and distinct crimes; and (3) the intent of the Legislature. *Sanders v. State*, 2015 OK CR 11, ¶ 8, 358 P.3d 280, 284; *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126. If the crimes “truly arise” out of one act, Section 11 prohibits punishing the act twice or under more than one statute. *Davis*, 1999 OK CR 48, ¶ 13, 993 P.2d at 126. For example, the Court found Sanders’s convictions for possession of a firearm by a convicted felon and knowingly concealing stolen property violated Section 11 because both convictions were supported by the same weapon, there was no temporal break between the possession of the gun and its concealment, and the language of the Information provided the same time frame for both offenses. *Sanders*, 2015 OK CR 11, ¶ 11, 358 P.3d at 284.

In this case, the evidence established but one agreement with respect to the methamphetamine found in Gonzales's car. The evidence showed that Samantha Johnson, Penny Chavez, Gonzales, and a man identified as Chuey, agreed to have Gonzales take methamphetamine supplied by Chuey in Tulsa to Stigler where Johnson and Chavez would then sell it.² "Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one." *Braverman v. United States*, 317 U.S. 49, 53 (1942).

The factors we reviewed in *Sanders* weigh in Gonzales's favor. The prosecution relied on Gonzales's possession of the same methamphetamine for the conspiracy to traffic illegal drugs and the conspiracy to distribute drugs. The language alleging Counts 2 and 3 in the Information provided the same time frame for both offenses and named the same conspirators. There was no genuine temporal

² The State did not name Chuey as a conspirator in the Information.

break between the challenged conspiracies establishing separate agreements. The single agreement involved various people playing different roles and committing overt acts in furtherance of the conspiracy to pedal drugs in Stigler, Oklahoma. Under the reasoning of *Sanders*, one agreement concerning the same methamphetamine resulted in two conspiracy charges and punishments for the same act of possession. Gonzales has therefore established the commission of a Section 11 violation. To remedy the error, we remand this case to the district court with instructions to dismiss Count 3.

3. Fourth Amendment

Gonzales argues that he is entitled to relief because the search of his car that produced the drug evidence violated the Fourth Amendment. He challenges the duration of the traffic stop and detention, claiming that it exceeded the purpose of the initial traffic stop rendering his consent to search involuntary. Gonzales did not challenge the stop or move to suppress the drug evidence based upon an illegal search. We review this claim for plain error only. The burden is on Gonzales in plain error review “to demonstrate that an error, plain or obvious under current law, adversely affected his

substantial rights.” *Hammick v. State*, 2019 OK CR 21, ¶ 8, 449 P.3d 1272, 1275. This Court will correct only those plain errors that seriously affected the fairness, integrity or public reputation of the judicial proceedings or represented a miscarriage of justice. *Id.*

Gonzales has the right under both the United States and Oklahoma constitutions to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Okla. Const. Article II, Section 30. A traffic stop is a seizure under the Fourth Amendment. *State v. Strawn*, 2018 OK CR 2, ¶ 21, 419 P.3d 249, 254 (citing *McGaughey v. State*, 2001 OK CR 33, ¶ 24, 37 P.3d 130, 136). The scope and duration of a traffic stop must be related to the stop and must last no longer than is necessary to effectuate the purpose of the stop (i.e., investigate the potential traffic infraction). *Seabolt v. State*, 2006 OK CR 50, ¶ 6, 152 P.3d 235, 237. For the duration of a traffic stop, not only is the driver seized but also the driver’s passengers. *Arizona v. Johnson*, 555 U.S. 323, 327, 129 S.Ct. 781, 784, 172 L.Ed.2d 694 (2009); *Brendlin v. California*, 551 U.S. 249, 259, 127 S.Ct. 2400, 2408, 168 L.E.d2d 132 (2007). Once the purpose of the traffic stop has ended, further detention for questioning unrelated to the initial

traffic stop is impermissible unless the officer has an objectively reasonable articulable suspicion that illegal activity has occurred or is occurring or the initial detention has become a consensual encounter. *Seabolt*, 2006 OK CR 50, ¶ 6, 152 P.3d at 237-38; *State v. Goins*, 2004 OK CR 5, ¶ 13, 84 P.3d 767, 770.

Gonzales was a passenger in Sharon Stevens's Suburban when she was stopped by police for a seatbelt violation. He does not challenge the validity of the initial stop. The record showed that Stevens could not produce a driver's license and that she admitted to driving without one. The record further showed that she consented to a search of her Suburban. Gonzales maintains that he should have been free to go once the Suburban search yielded nothing illegal and his record check was clear. He claims his detention became illegal when the undersheriff extended the stop, without reasonable suspicion, by asking for consent to search Gonzales's car followed by a further extension by the sheriff who also engaged Gonzales in conversation and asked him for consent to search.³ A unanimous

³ Gonzales states in his brief that "there was very little time between the start of the illegal detention and the consent to search." (Aplt's Brief at 26)

Supreme Court has held that “a passenger may bring a Fourth Amendment challenge to the legality of a traffic stop.” *Brendlin*, 551 U.S. at 259, 127 S.Ct. at 2408.

It was not disputed that Gonzales consented to a search of his car. The lawfulness of that search hinges on the timing of Gonzales’s consent in relation to the search of Stevens’s Suburban and the conclusion of the traffic stop’s purpose. The exact moment Gonzales gave consent was not established at trial with certainty because the legality of his consent was not contested. The undersheriff testified that he witnessed the stop of Stevens’s Suburban from across the street. He went over and made contact with Gonzales and Johnson outside of the Suburban. The undersheriff asked for and obtained Gonzales’s consent to search his car. He could not recall, however, whether he obtained consent to search from Gonzales before or after the search of Stevens’s Suburban. Once the undersheriff had received consent to search from Gonzales, the sheriff spoke with Gonzales and also obtained consent to search. The sheriff’s arrival coincided with the completion of the search of Stevens’s Suburban. The bodycam video of one of the officers showed different parts of the

traffic stop, but did not include all interactions with Gonzales. Once the search of the Suburban was complete, one of the officers who had been searching the Suburban tells the officer who pulled Stevens over to finish up whatever citation he intends to issue. That officer picked up his citation book and walked towards Stevens. There is a break in the footage and the video picked up again as the sheriff signaled other officers he had Gonzales's consent to search. The record does not show whether the officer tasked with issuing Stevens some kind of citation had completed it at that time or whether the undersheriff had already obtained consent to search. Moreover, it appeared from the video that dispatch reported Gonzales's record check was clear well into the search of his car.

The United States Supreme Court has held that “the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’ - to address the traffic violation that warranted the stop and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S.Ct. 1609, 1614, 191 L.Ed.2d 492 (2015) (internal citation omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are - or

reasonably should have been - completed.” *Id.* This Court has acknowledged that during a routine traffic stop an officer may “request a driver’s license, vehicle registration and other required papers, run necessary computer checks, and then issue any warning or citation.” *Seabolt*, 2006 OK CR 50, ¶ 9, n. 5, 152 P.3d at 238, n. 5 (citing *U.S. v. Gregoire*, 425 F.3d 872, 879 (10th Cir. 2005)).

Gonzales has not established that his detention exceeded the time necessary to issue the appropriate citation and complete the permissible records check. He has therefore not shown that his consent to search his car was obtained only after the purpose of the stop had ended. For these reasons, he has not established the commission of an error and his claim is therefore denied. *See Hogan v. State*, 2006 OK CR 19, ¶ 39, 139 P.3d 907, 923 (“The first step in plain error analysis is to determine whether error occurred.”)

4. Jury Instructions

Gonzales contends the jury instructions setting forth the elements of conspiracy for Counts 2 and 3 were insufficient statements of the law under the facts of the case. Gonzales argues that the instructions were defective because they failed to name the

two alleged conspirators listed in the Information (Penny Chavez and Samantha Johnson) and provided that the State need prove only that Gonzales was party to an agreement by two or more unidentified persons to commit the specified crime. According to Gonzales, the vagueness of the instruction allowed the jury to convict him based on a conspiracy he may have entered into with “Chuey” only to traffic or distribute methamphetamine rather than the named conspirators. Because Gonzales did not object to the challenged instructions below, review is for plain error. *See Bivens v. State*, 2018 OK CR 33, ¶ 20, 431 P.3d 985, 994. Gonzales must show the commission of a plain or obvious error affected the outcome of the trial. *Nicholson v. State*, 2018 OK CR 10, ¶ 9, 421 P.3d 890, 895. This Court will correct plain error provided the error seriously affected the fairness, integrity or public reputation of the proceedings. *Id.*

Gonzales concedes: 1) that the challenged instructions conformed to the Oklahoma Uniform Jury Instructions for a charge of conspiracy;⁴ and 2) that the uniform instructions should be used unless the district court determines the particular uniform

⁴ Instruction No. 2-17, OUJI-CR2d.

instruction does not accurately state the applicable law. Gonzales can show no error stemming from the district court's use of the uniform instruction on the elements of conspiracy. The district court's instructions included a jury instruction setting forth the allegations in the Information which informed the jury that Gonzales was charged with conspiring with Johnson and Chavez for each count of conspiracy. This Court has long held that jury instructions are not to be considered in isolation but as a whole and "[t]his Court will deny relief on a claim of jury instruction error when the jury instructions, as a whole, accurately state the applicable law." *Mitchell v. State*, 2018 OK CR 24, ¶ 22, 424 P.3d 677, 684. Because the instructions, read together, sufficiently apprised the jury of the persons with whom Gonzales was charged with conspiring, he has not shown the commission of an error, plain or otherwise. This claim is denied.

5. Ineffective Assistance of Counsel

Gonzales contends he is entitled to relief because of ineffective assistance of trial counsel. He faults defense counsel for failing to file a motion to suppress the drug evidence as fruits of an illegal seizure

and for failing to object to the instructions on the elements of conspiracy. See Propositions 3 and 4. This claim is without merit.

This Court reviews claims of ineffective assistance of counsel to determine: (1) whether counsel's performance was constitutionally deficient; and (2) whether counsel's performance prejudiced the defense so as to deprive the defendant of a fair trial with reliable results. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Malone v. State*, 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206. This Court need not determine whether counsel's performance was deficient if there is no showing of harm. See *Malone*, 2013 OK CR 1, ¶ 16, 293 P.3d at 207.

Gonzales cannot show the necessary prejudice because, as discussed above, the record does not show his detention exceeded the time necessary to issue the appropriate citation and complete the permissible records check so as to render his consent involuntary. Nor has Gonzales shown the submission of the uniform instruction on the elements of conspiracy resulted in error. This claim is denied.

6. Consecutive Sentences

Gonzales claims the district court abused its discretion by ordering his sentences to be served consecutively. He bases this claim on a remark made by the prosecutor, indicating the court had a policy of running a defendant's sentences consecutively if he or she exercised his or her right to jury trial.⁵ Gonzales neither responded nor objected to the prosecutor's remark.

Whether sentences will be served consecutively or concurrently is a discretionary decision made by the district court. *Kamees v. State*, 1991 OK CR 91, ¶ 21, 815 P.2d 1204, 1208-09, *overruled on other grounds by Davis v. State*, 2018 OK CR 7, 419 P.3d 271. We review those decisions when challenged on appeal only for an abuse of discretion. *Id.* We will find an abuse of discretion only when a district court's decision is not supported by the facts or law of the case. *Id.* Absent proof of an abuse of discretion, we will affirm the decision of the district court. *Id.*

⁵ The prosecutor argued against the merger of Gonzales's counts of conspiracy at formal sentencing and then added, "And I'm also asking, as I believe is this Court's pretty much standard, that if someone does take this to jury trial and is convicted and sentenced to incarceration, that the counts run consecutive to each other."

Other than the lone remark of the prosecutor, there is nothing in the record showing that the court had any kind of policy concerning consecutive sentences or that it failed to exercise its discretion in deciding how Gonzales's sentences would be served. The district court was willing to entertain any evidence the parties wished to present relevant to sentencing, noting there was no presentence investigation report allowed under the statute. The district court was willing to hear from Gonzales personally, but he declined the opportunity to address the court. The parties then addressed whether the conspiracy counts should merge. The court explained its understanding of the opposing views on the merger issue and its reasoning for denying merger. The district court then fixed punishment in accordance with the jury's verdict. The court in no way acknowledged the validity of the prosecutor's remark either when it was made or when the court ordered consecutive sentences. Equally important is the fact that defense counsel, despite having the opportunity, never asked for concurrent sentences and/or leniency and did not object to the imposition of consecutive sentences. This Court presumes a district court followed the law unless there is proof

to the contrary. *See Marshall v. State*, 1998 OK CR 30, ¶ 32, 963 P.2d 1, 11. Based on this record, we find that the district court did not abuse its discretion in ordering Gonzales's sentences to be served consecutively and deny this claim.

DECISION

The Judgment and Sentence of the district court on Counts 1 and 2 is **AFFIRMED**. The Judgment and Sentence of the district court on Count 3 is **REMANDED** to the district court with instructions to **DISMISS**. Gonzales's Application for Evidentiary Hearing is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2020), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF
HASKELL COUNTY, THE HONORABLE BRIAN C. HENDERSON,
ASSOCIATE DISTRICT JUDGE**

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KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur in Results
HUDSON, J.: Concur