

AUG 14 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

BRANDON J. GRIMLAND,)
)
Appellant,)
v.)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION
Case No. F-2002-855

SUMMARY OPINION

CHAPEL, JUDGE:

Brandon Grimland was tried by jury and convicted of First Degree Manslaughter in violation of 21 O.S. 2001, § 711, after two or more former convictions, in Muskogee County District Court Case No. CF-2001-656.¹ In accordance with the jury's recommendation, the Honorable Mike Norman sentenced Grimland to one hundred (100) years' imprisonment. Grimland appeals from this conviction and sentence.

Grimland raises the following propositions of error:

- I. The evidence was insufficient to find Mr. Grimland was guilty beyond a reasonable doubt.
- II. The prosecutor improperly raised questions about how much time Appellant served on prior convictions and, as a result, the jury improperly considered the possibility of parole, resulting in an excessive sentence which warrants modification.
- III. The sentence imposed was so disproportionate and excessive under the circumstances of this case that it should shock the conscience of this Court.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, briefs and exhibits, we find that the

Judgment should be affirmed but that Grimland's sentence must be modified. We find in Proposition I that the evidence was sufficient to establish that Grimland's beating proximately caused Hughart's death.² We find in Proposition II that Grimland's sentence must be modified from one hundred (100) years' imprisonment to twenty-five (25) years' imprisonment because the prosecutor improperly injected parole into the jury's sentencing decision.³

Decision

The Judgment is **AFFIRMED** and the Sentence is **MODIFIED** from one hundred (100) years' imprisonment to twenty-five (25) years' imprisonment.

ATTORNEYS AT TRIAL

JOHN BUTLER
CARLOS WILLIAMS
JOHN BUTLER & ASSOCIATES
6846 S. CANTON, SUITE 150
TULSA, OKLAHOMA 74136
ATTORNEYS FOR THE DEFENDANT

DAVID PIERCE
ASSISTANT DISTRICT ATTORNEY
220 STATE STREET
MUSKOGEE, OKLAHOMA 74401
ATTORNEY FOR THE STATE

ATTORNEYS ON APPEAL

DANNY G. LOHMANN
APPELLATE DEFENSE COUNSEL
P.O. BOX 926
NORMAN, OKLAHOMA 73070
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
JENNIFER J. DICKSON
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLLEE

¹ Grimland had been charged with First Degree Murder.

² *Spuehler v. State*, 709 P.2d 202, 203-204 (Okl.Cr.1985). The evidence established that Hughart died from blunt force trauma to the head as a result of the beating administered by Grimland and a subsequent stairwell fall that occurred as a direct result of the beating. Accordingly, a rational trier of fact could have found that Grimland was the proximate cause of Hughart's death. We also find that the jury did not have to be instructed that the evidence had to exclude every reasonable hypothesis but Grimland's guilt.

³ *Stringfellow v. State*, 744 P.2d 1277, 1279 (Okl.Cr.1987). The prosecutor repeatedly improperly injected parole into the jury's sentencing decision. Although these questions and comments were unobjected to, they were plain error because they had a "substantial influence" on the jury's sentencing recommendation. *Simpson v. State*, 876 P. 2d 690, 702 (Okl.Cr.1994). Proposition III is rendered moot due to the relief granted in Proposition II as a twenty-five (25) year sentence for First Degree Manslaughter is not excessive.

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR IN RESULT

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

LUMPKIN, J.: CONCUR

STRUBHAR, J.: CONCUR

LILE, VICE PRESIDING JUDGE: CONCURS IN PART/DISSENTS IN PART

I believe this case should be remanded for re-sentencing.