

FILED  
 IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA  
 JUL 20 2001  
 JAMES W. PATTERSON  
 CLERK

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

**TONY GUINN,** )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
**THE STATE OF OKLAHOMA,** )  
 )  
 Appellee. )

**NOT FOR PUBLICATION**  
 Case No. F-2000-939

**SUMMARY OPINION**

**LILE, JUDGE:**

Appellant, Tony Guinn, was found guilty at jury trial of two counts of Workers' Compensation Fraud in violation of 21 O.S.1994, § 1663, in Case No. CF-98-3641 in the District Court of Oklahoma County. The Honorable Susan W. Bragg, District Judge, sentenced Appellant in accordance with the jury's verdicts to a \$2,000 fine and one (1) year imprisonment on each count, to be served consecutively. Appellant has perfected his appeal to this Court.

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

- MR. GUINN'S MULTIPLE PUNISHMENT ON TWO COUNTS OF WORKERS' COMPENSATION FRAUD ARISING OUT OF ONE CLAIM FOR BENEFITS VIOLATES THE STATE AND/OR FEDERAL DOUBLE JEOPARDY PROHIBITION.

After a thorough consideration of this proposition and the entire record before us, including the original record, transcripts and briefs of the parties, we have determined that reversal is not required under the facts and the law.

Appellant's conviction on two counts based upon fraudulent statements to different doctors did not violate the federal or state double jeopardy constitutional provisions. *Blockburger v. U.S.*, 248 U.S. 299, 302, 52 S.Ct. 180, 181, 76 L.Ed. 306 (1932); *Bogue v. State*, 1976 OK CR 274, ¶ 7, 556 P.2d 272, 275; *Ebeling v. Morgan*, 237 U.S. 625, 35 S.Ct. 710, 59 L.Ed. 1151 (1910); *Morgan v. Devine*, 237 U.S. 632, 35 S.Ct. 712, 59 L.Ed. 1153 (1910).

However, under the facts of this case, the sentence should be modified to provide the counts shall run concurrently. *Maxwell v. State*, 1989 OK CR 22, ¶ 12, 775 P.2d 818, 820.

### **DECISION**

The Judgment of the district court is **AFFIRMED**, however the Sentences are **MODIFIED** to run concurrently.

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**OPINION BY: LILE, J.**

**LUMPKIN, P.J.: CONCURS IN PART/DISSENTS IN PART**

**JOHNSON, V.P.J.: CONCURS**

**CHAPEL, J.: CONCURS IN PART/DISSENTS IN PART**

**STRUBHAR, J.: CONCURS**

RB

**LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART**

I concur in the Court's decision to affirm the judgments in this case. However, I can find no basis in law or fact to modify the sentences, and dissent to the Court's action which directs the sentences be served concurrently.

**CHAPEL, JUDGE, CONCURS IN PART/DISSENTS IN PART:**

I would reverse one of the two counts as a violation of double jeopardy clause of both the state and federal constitutions. Here, there was one claim for worker's compensation supported by two misrepresentations to separate physicians.