

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ALEXANDER BRANDON HALL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

)
) NOT FOR PUBLICATION
)
)
)
)
)
)
)
)

Case No. C-2011-945

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP - 6 2012

SUMMARY OPINION
DENYING PETITION FOR WRIT OF CERTIORARI MICHAEL S. RICHIE
CLERK

C. JOHNSON, JUDGE:

Petitioner, Alexander Brandon Hall, was charged in Tulsa County District Court, Case No. CF-2010-316, with Robbery with a Firearm, Assault and Battery with a Dangerous Weapon, and Assault with a Dangerous Weapon, each After Former Conviction of Two or More Felonies. On September 12, 2011, Hall entered a negotiated plea of nolo contendere to the crimes charged. The Honorable William Musseman accepted Hall's plea and sentenced him to twelve years imprisonment and a \$600 fine on each count.¹ The court ordered the counts to run concurrent with each other and with sentence imposed in Case No. CF-2010-287. Hall subsequently filed a motion to withdraw his plea. His motion was denied after a hearing held on October 13, 2011. Hall appeals this ruling.

Hall raises the following propositions of error:

1. Mr. Hall has been subjected to multiple punishments, which requires the dismissal of Count I or Count III.

¹ Robbery with a Firearm is an 85% crime.

2. The trial court erred by accepting a plea of no contest in Count II, Assault and Battery with a Dangerous Weapon, because the evidence was insufficient to support this charge.
3. Mr. Hall should be allowed to withdraw his pleas of guilty because the pleas were not knowingly and intelligently entered into by Hall; instead, they were with inadvertence and by mistake.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm the trial court's order denying Hall's Motion to Withdraw. However, we also reverse Count III with instructions to dismiss.

As to Proposition I, we find that the act which formed the basis for the crime of Assault with a Dangerous Weapon was not separate and distinct from, but was included within, the same general act which formed the basis for the crime of Robbery with a Firearm. Accordingly, Hall's conviction on Count III, Assault with a Dangerous Weapon, must be reversed with instructions to dismiss as this Section 11 violation was plain error. 21 O.S.2001, § 11. See also *Jones v. State*, 2006 OK CR 5, ¶ 63, 128 P.3d 521, 543; *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142.

In Proposition II, we find that the Information and the probable cause affidavit provided a sufficient factual basis upon which the district court could accept Hall's nolo contendere plea to the crime of Assault and Battery with a Dangerous Weapon. *Hagar v. State*, 1999 OK CR 35, ¶ 4, 990 P.2d 894, 896-97. The evidence was sufficient to support this charge. There was no plain error here.

In Proposition III, we note that based upon the answers Hall gave at the plea hearing and in his Plea of Guilty Summary of Facts form, the district court found that Hall's nolo contendere plea was knowingly and voluntarily entered. We find that the district court did not abuse its discretion in so ruling. *Coyle v. State*, 1985 OK CR 121, ¶ 5, 706 P.2d 547, 548.

DECISION

The Petition for Writ of Certiorari is **DENIED**. Count III is **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM MUSSEMAN, DISTRICT JUDGE**

**APPEARANCES AT HEARING
ON MOTION TO WITHDRAW**

STEPHEN LEE
423 SOUTH BOULDER
TULSA, OK 74119
ATTORNEY FOR DEFENDANT

STUART ERICSON
ASSISTANT DISTRICT ATTORNEY
500 SOUTH DENVER
TULSA, OK 74013
ATTORNEYS FOR THE STATE

APPEARANCES ON APPEAL

KATRINA CONRAD-LEGLER
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
JAY SCHNIEDERJAN
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st ST.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE

OPINION BY C. JOHNSON, J.

A. JOHNSON, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR IN RESULTS
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART
SMITH, J.: CONCUR