

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
NOV - 7 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WENDELL HAMILTON, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

MICHAEL S. RICHIE  
CLERK  
NOT FOR PUBLICATION

Case No. F 2002-1259

SUMMARY OPINION

**JOHNSON, PRESIDING JUDGE:**

Appellant, Wendell Hamilton, was convicted by a jury in Oklahoma County District Court, Case No. CF 2001-943, of Robbery in the First Degree, after former conviction of two or more felonies (Counts 1 - 9, 12), in violation of 21 O.S.2001, § 791; Robbery with Imitation Firearm, after former conviction of two or more felonies (Count 10), in violation of 21 O.S.2001, § 801, and Possession of Drug Paraphernalia (Count 11), in violation of 63 O.S.2001, § 2-405. Jury trial was held on September 23-25, 2002, before the Honorable Susan Caswell, District Judge. The jury set punishment at life imprisonment on Counts 1-10 and 12, and one year imprisonment on Count 11. Judge Caswell ordered Counts 1-10 and 12 to be served consecutively, and Count 11 to be served concurrently with Counts 1-10 and 12. From the Judgment and Sentence imposed, Appellant filed this appeal.

Appellant raises two propositions of error:

1. The trial court erred in permitting joinder of the separate cases for trial, to the prejudice of Appellant Wendell Hamilton, and

2. Given the circumstances of the crimes, Appellant's sentences are excessive and grossly disproportionate, in violation of the Eighth Amendment to the United States Constitution and Art.II, § 9 of the Oklahoma Constitution.

After thorough consideration of the propositions raised, and the entire record before us on appeal, including the original record, transcripts, briefs and exhibits of the parties, we have determined Appellant's convictions should be affirmed, but the sentences modified for the reasons set forth below.

The decision to allow joinder of offenses is within the discretion of the trial court, and we find the trial court did not abuse its discretion by allowing joinder of offenses over Appellant's objection. *Brewer v. City of Tulsa*, 1991 OK CR 59, ¶ 13, 811 P.2d 604, 607 (decision to grant severance within discretion of trial court); *Glass v. State*, 1985 OK CR 65, ¶ 9, 701 P.2d 765, 768; *Middaugh v. State*, 1988 OK CR 295, ¶ 10, 767 P.2d 432, 435; 22 O.S.2001, §§ 436, 438, 439. Proposition One therefore does not warrant relief.

The life sentences imposed by the jury for Counts 1-10 and 12 were within the statutory limits. The decision whether to run sentences concurrently or consecutively is within the discretion of the trial court. *Sherrick v. State*, 1986 OK CR 142, ¶ 16, 725 P.2d 1278, 1284. However, modification is an appropriate remedy when the sentence shocks the conscience of the court. *Baker v. State*, 1998 OK CR 46, ¶ 8, 966 P.2d 797, 798; 22 O.S.2001, § 1066. The trial court's decision to run eleven life sentences consecutively resulted in an excessive sentence which shocks the conscience of the Court. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149; *Maxwell v. State*, 1989 OK

CR 22, ¶ 12, 775 P.2d 818, 820. We are of the opinion that the interests of justice will be better served if the sentences are run concurrently.

**DECISION**

The Judgments and Sentences imposed in Oklahoma County District Court, Case No. CF 2001-943, are hereby **AFFIRMED**, but **MODIFIED** to run concurrently as set forth above.

**APPEARANCES AT TRIAL**

CYNTHIA TEDDER  
ASST. PUBLIC DEFENDER  
OKLA. COUNTY OFFICE BLDG.  
320 ROBERT S. KERR, SUITE 505  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR DEFENDANT

JAMES SIDERIAS  
KATHRYN SCHMIDT  
ASST. DISTRICT ATTORNEYS  
320 ROBERT S. KERR,  
OKLAHOMA CITY, OK 73102  
ATTORNEYS FOR THE STATE

**APPEARANCES ON APPEAL**

CAROLYN MERRITT  
ASST. PUBLIC DEFENDER  
OKLA. COUNTY OFFICE BLDG.  
320 ROBERT S. KERR, SUITE 505  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR APPELLANT

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

**OPINION BY: JOHNSON, P.J.**

LILE, V.P.J. : Concur in  
Part/Dissents in Part  
LUMPKIN, J.: Concur in Results  
CHAPEL, J.: Concur  
STRUBHAR, J.: Concur

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

Eleven life sentences shock the Court's conscience. Eight life sentences don't shock the Court's conscience. I would just affirm the case.