

FEB 19 2008

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

AARON PERRY HAMPTON,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

] NOT FOR PUBLICATION

] Case No. C-2007-554

**SUMMARY OPINION DENYING WRIT OF CERTIORARI
AND REMANDING FOR CORRECTION OF JUDGMENT AND SENTENCE**

LEWIS, JUDGE:

Aaron Perry Hampton, Petitioner, entered blind pleas of guilty to Count 1, burglary in the first degree, in violation of 21 O.S.2001, § 1431; and *nolo contendere* to Count 2, assault with a dangerous weapon, in violation of 21 O.S.2001, § 645. Petitioner also pled *nolo contendere* to Count 4, assault and battery, in violation of 21 O.S.Supp.2006, § 644; and Count 5, obstructing an officer in violation of 21 O.S.2001, § 540, in the District Court of Tulsa County, Case No. CF-2006-5407. The State alleged Petitioner committed Counts 1 and 2 after prior conviction of two (2) or more felonies. The Honorable William C. Kellough, District Judge, convicted Petitioner upon his pleas and ordered a pre-sentence investigation. Judge Kellough later sentenced Petitioner to concurrent terms of thirty five (35) years imprisonment and a \$ 2000.00 fine in each of Counts 1 and 2; ninety (90) days in jail and a \$ 500.00 fine in Count 4;

and one (1) year in jail and a \$ 1000.00 fine in Count 5. Petitioner moved to withdraw the pleas. After evidentiary hearing, the District Court denied the application. Petitioner seeks the writ of certiorari to vacate the judgment of the District Court, 22 O.S.2001, § 1051(a), alleging three propositions of error:

1. The Trial Court Abused Its Discretion By Overruling Mr. Hampton's Motion To Withdraw His Pleas Because Petitioner Did Not Knowingly And Voluntarily Enter His Pleas.
2. Petitioner's Sentences In Count 1 And Count 2 That Total Thirty Five Years Are Excessive, Should Shock The Conscience Of This Court And Should Be Favorably Modified.
3. This Court Should Remand Mr. Hampton's Case To The District Court Of Tulsa County With Instructions To Correct The Judgment And Sentence Documents By An Order *Nunc Pro Tunc*.

In Proposition One, we find the circumstances show that Petitioner was mentally competent to enter his plea and did so knowingly and voluntarily. *Ocampo v. State*, 1989 OK CR 38, ¶ 7, 778 P.2d 920, 923. Petitioner has not shown that his guilty plea was a result of ignorance, inadvertence, or improper influence. *Dangerfield v. State*, 1987 OK CR 185, ¶ 9, 742 P.2d 573, 575.

Proposition Two alleges an excessive sentence. The sentence imposed on a defendant's plea of guilty or *nolo contendere* is within the District Court's discretion. The sentences here are within the statutory range authorized by law and are appropriate to the seriousness of the offense. *Rea v. State*, 2001 OK CR 28, 34 P.3d 148. We decline to modify them. Proposition Two is denied.

In Proposition Three, Petitioner points out that due to clerical errors, the Judgment and Sentence documents do not properly reflect the District Court's order that *all sentences* are to be served concurrently as pronounced by the District Court at sentencing. He also points out that Judgment and Sentence documents recite the wrong case number for a prior conviction as CF-91-566, rather than the correct case number, CF-1991-3566. While the latter error threatens no conceivable prejudice to Petitioner, we **REMAND** this matter to the District Court of Tulsa County with instructions to enter corrected Judgments and Sentences, and otherwise **AFFIRM**.

DECISION

The Petition for the Writ of Certiorari is **DENIED**. The Judgment and Sentence of the District Court of Tulsa County is **REMANDED** for correction of the clerical errors noted herein but otherwise **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2007), 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 C. KELLOUGH, DISTRICT JUDGE**

APPEARANCES AT TRIAL

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ATTORNEY FOR THE STATE

OPINION BY LEWIS, J.
LUMPKIN, P.J.: Concur
C. JOHNSON, V.P.J.: Concur
CHAPEL, J.: Concur
A. JOHNSON, J.: Concur

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NO RESPONSE NECESSARY