

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

BRUCE HAMPTON,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

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| FILED |
| IN COURT OF CRIMINAL APPEALS |
| STATE OF OKLAHOMA |
| FEB } 1 2000 |
| JAMES W. PATTERSON |
| CLERK |

NOT FOR PUBLICATION
No. F-99-710

SUMMARY OPINION

STRUBHAR, PRESIDING JUDGE:

Bruce Hampton, hereinafter Appellant, was convicted of one count of Trafficking in Cocaine Base, After Former Conviction of Two or More Felonies (63 O.S.Supp.1993, § 2-415) (Count 1), one count of Failure to Affix a Tax Stamp, After Former Conviction of Two or More Felonies (68 O.S.1991, § 450.8) (Count 2) and one count of Public Intoxication (37 O.S.1991, § 8) (Count 3), following a jury trial in the District Court of Osage County, Case No. CF-97-34, the Honorable William H. Mattingly, Associate District Judge, presiding. The jury recommended fifty (50) years imprisonment and a \$100,000.00 fine on Count 1, fifty (50) years imprisonment on Count 2 and thirty (30) days in the county jail on Count 3. The trial court sentenced Appellant accordingly and ordered the sentences to be served consecutively. From this Judgment and Sentence, Appellant appeals.

The following proposition of error was considered:

- I. Appellant's fine on Count One is illegal and should be modified.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find the fine on Count 1 must be modified. The State sought to enhance Appellant's sentence pursuant to the second and subsequent offense statute, 21 O.S.1991, § 51(B), alleging ten prior non drug related felonies. Appellant correctly asserts, and the State concedes, that the trial court correctly instructed the jury on the range of punishment, but erred in instructing the jury on the permissible fine. The trial court's instruction (O.R. 143-44) combined the range of punishment from the second and subsequent offense statute in section 51 with the fine provision provided in the Trafficking in Illegal Drugs Act, 63 O.S.Supp.1993, § 2-415 (C)(7)(b). This was error. *Gaines v. State*, 568 P.2d 1290, 1294 (Okl.Cr.1977). *See also Novey v. State*, 709 P.2d 696, 699-700 (Okl.Cr.1985). The proper fine provision is found in 21 O.S.Supp.1993, § 64 and provides for a fine of not more than \$10,000.00. Under our authority to modify the fine, 22 O.S.1991, § 1066, we find the fine should be modified to \$10,000.00 on Count 1.

DECISION

The Judgment and Sentence of the trial court on Counts 2 and 3 is **AFFIRMED**. The Judgment of the trial court on Count 1 is **AFFIRMED**, but the fine on Count 1 is hereby **MODIFIED** to \$10,000.00.

APPEARANCES AT TRIAL

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OPINION BY: STRUBHAR, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR

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