

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 15 2005

MICHAEL S. RICHIE
CLERK

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

JOHN DALE HOLBROOK,)
)
 Appellant,)
vs.)
)
STATE OF OKLAHOMA,)
)
 Appellee.)

No. F-2004-433

SUMMARY OPINION

On August 24, 2001, Appellant was charged with Possession of a Stolen Vehicle and Leaving the Scene of an Accident, both in Case No. CF-2001-206 in the District Court of Okmulgee County. On September 5, 2001, Appellant was charged with Conjoint Robbery in Case No. CF-2001-216, also in the District Court of Okmulgee County. On September 7, 2001, Appellant, represented by counsel, entered a no contest plea to the charges in Case No. CF-2001-206. Appellant was ordered to complete the RID (Regimented Inmate Discipline) program, whereupon sentencing would be delayed for five (5) years. He was ordered to re-appear before the District Court in January 2002 for final disposition of his case. However, Appellant was not allowed to attend the RID program because of the pending charge for Conjoint Robbery filed in Case No. CF-2001-215.

On January 7, 2002, Appellant, again represented by counsel, entered a no contest plea to the Conjoint Robbery charge. At that time, Appellant was

sentenced in both Case Nos. CF-2001-206 and CF-2001-215, and was given five (5)year, concurrent, deferred sentences.

On February 12, 2004, the State filed an Application to Accelerate alleging that Appellant committed the new offense of Feloniously Pointing a Firearm as charged in Case No. CF-2004-18, filed in the District Court of Okmulgee County. Appellant stipulated to the violations of the terms and conditions of his deferred sentences. Appellant's sentencing was delayed pending his sentencing in Case No. CF-2004-18. On April 16, 2004, Appellant was sentenced to five (5)years for the Stolen vehicle charge and one (1)year for Leaving the Scene of an Accident, in Case No. CF-2001-206. He was also sentenced to twenty (20)years in Case No. CF-2001-215 (Conjoint Robbery). The sentences were ordered to run concurrently. From this judgment and sentence, Appellant appeals.'

On appeal Appellant raised one proposition of error:

1. The sentences imposed are excessive.

We find merit in Appellant's argument with respect to his sentence in Case No. CF-2001-215. The record contains minimal information as to the circumstances of the Conjoint Robbery charge. However, both Appellant and the State admit that Appellant, along with two (2)other defendants, robbed James Hester of a gold class ring and a diamond earring. The articles were taken from the victim "by means of force and fear". There was no weapon involved, there was no physical assault and apparently no personal injury to the victim. The

defendants told the victim they would "do him bodily harm" if he did not give up his possessions. Appellant was seventeen (17) years old at the time.

With regard to Appellant's charge of Feloniously Pointing A Firearm (Case No. CF-2004-18, upon which the Acceleration Application was based), the Offer of Proof filed by the State alleged that Appellant was at Wal-Mart in Okmulgee where he was observed punching a female companion. The two (2) got into a car with each other and left the parking lot. The three (3) victims in this case observed Appellant's actions and followed him and the female in order to get a license number to report the incident to the police. Some distance from Wal-Mart, Appellant stopped his vehicle, got out and pointed a firearm at the victims' vehicle. The victims backed away and left the area. Appellant was arrested and charged with Feloniously Pointing a Firearm. Appellant received a five (5) year sentence for that offense.

Appellant does not deny that he violated the terms and conditions of his probation, nor does he argue that the sentences imposed are outside the statutory limitations for the offenses charged. Rather, his claim is that in light of Appellant's age and the circumstances of these particular offenses, the sentences imposed are too harsh.

Title 22 O.S. § 1066 confers upon this Court this power to review the entire record to determine the appropriateness of the judgment and sentence. See, 22 O.S. § 1066; *Livingston v. State*, 1990 OK CR 40, ¶ 11, 795 P.2d. 1055,

¹ It appears that Appellant has completed service of his sentence for Leaving the Scene of an

1058. This Court has consistently held that where a sentence is within statutory limits, the sentence imposed will not be modified unless, under the facts and circumstances of the case, it is so excessive as to shock the conscience of the Court. *Penyman v. State*, 1999 OK CR 39, ¶ 11, 990 P.2d 900; *Freeman v. State*, 1994 OK CR 37, ¶ 38, 876 P.2d 283, 291, *cert. denied*, 513 U.S. 1022, 115 S.Ct. 590, 130 L.Ed.2d 503 (1994).

In this instance, we find that the sentences imposed in Appellant's Case No. CF-2001-206 do not require modification. However, the sentence imposed in Case No. CF-2001-215, under the facts and circumstances of this particular case, seems excessive.

IT IS THEREFORE THE ORDER OF THIS COURT THAT the sentence imposed in Appellant's Case No. CF-2001-215, in the District Court of Okmulgee County is **MODIFIED** to ten (10) years, with all but the first five (5) years suspended. The judgment and sentence imposed in Case No. CF-2001-206 is **AFFIRMED**.

The Clerk of this Court is directed to mail a copy of this opinion to the District Court of Okmulgee County, the Court Clerk of Okmulgee County, counsel of record, and Appellant.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 15th day
of Jaly, 2005.

1/20/2020

CHARLES S. CHAPPEL, Presiding Judge

[Handwritten signature of Charles S. Chappel]

*I concur in affirming
the judgments in each case.
The sentence in CF-2001-20
I dissent to the Court I write
my knowledge of the affe*

GARY L. LUMPKIN, Vice Presiding Judge

[Handwritten signature of Gary L. Lumpkin]

*Modify the sentence
in CF-2001-215 by
on their facts
rather than apply
the rule.*

CHARLES A. JOHNSON, Judge

[Handwritten signature of Charles A. Johnson]

ARLENE JOHNSON, Judge

ATTEST:

[Handwritten signature of Richard S. Richie]

Clerk