

MAR 13 2008

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA  
MICHAEL S. RICHIE  
CLERK

JEFFREY L. JINKS,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. C-2007-829
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

**SUMMARY OPINION DENYING CERTIORARI**

**A. JOHNSON, JUDGE:**

Petitioner Jeffery L. Jinks pled guilty in the District Court of Stephens County, Case No. CF-2006-137, to one count of Child Sexual Abuse, in violation of 10 O.S.Supp.2002, § 7115 (E). The Honorable Joe H. Enos accepted Jinks's plea and ordered a Presentence Investigation Report. Jinks filed a motion to withdraw his plea prior to his sentencing hearing, which was denied. The district court held a sentencing hearing and sentenced Jinks to 35 years imprisonment with all but the first 20 years suspended. Jinks thereafter filed a motion to reconsider his application to withdraw plea. After an evidentiary hearing, the district court denied Jinks's motion. Jinks appeals the district court's order denying reconsideration of his application to withdraw plea.

This case raises the following issues:

- (1) whether Jinks understood the nature and consequences of entering a blind plea;

(2) whether Jinks's plea was voluntary because the statute under which he was charged was not the statute which applied to the offense alleged; and

(3) whether Jinks's sentence is excessive.

We find reversal is not required and affirm the Judgment. We do, however, find that sentence modification is warranted in this case and hereby modify Jinks's sentence for the reasons discussed below.

**1.**

The trial court did not abuse its discretion in denying Jinks's motion to withdraw plea. *See Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251. The record shows that Jinks understood that he could be sentenced within the range provided by law and that serving his sentence in a group home was a possibility, but was not guaranteed.

**2.**

Nor do we find merit in Jinks's claim that he was charged under a general statute when a more specific statute controlled. Prosecutors have broad discretion in deciding what charges to bring. *See Franks v. State*, 2006 OK CR 31, ¶ 6, 140 P.3d 557, 558. That discretion is limited by the common law rule that provides that specific statutes control over general ones. *Id.* Charging the accused under a more general statute thwarts the legislative intent in enacting the more specific one and is error. *See Id.*, 140 P.3d at 559.

Both 10 O.S.Supp.2002, § 7115 (E) and 21 O.S.Supp.2003, § 1123 criminalize lewd molestation and overlap in that respect. Child sexual abuse,

however, is applicable to persons responsible for the child's health, safety or welfare, who commit lewd molestation. 10 O.S.Supp.2002, § 7115; 10 O.S.Supp.2005, § 7102 (5). The legislature enacted a special lewd molestation provision for those whose relationship is to protect children that allows for harsher punishment for those who violate their duty. Narrowing the class of offenders to which the crime applies in § 7115 (E) makes it the more specific statute. This claim is denied.

3.

We find merit in Jinks's claim that his sentence is excessive. *See Head v. State*, 2006 OK CR 44, ¶ 27, 146 P.3d 1141, 1148 ("A sentence within the statutory range will be affirmed unless, considering all the facts and circumstances, it shocks the conscience of this Court.")

Jinks entered a blind plea and the district court sentenced him within the range of punishment provided by law. The impetus for the court's lengthy sentence is the protection of the public rather than the offense committed. Jinks has no prior criminal history. He has been treated in behavioral facilities throughout his childhood and adolescence. He has been diagnosed with Attention Deficit Hyperactivity disorder and bi-polar disorder. He is borderline in intellectual functioning. His thirty-five year sentence shocks our conscience under the facts and circumstances of this case. This Court has the power to modify Jinks's sentence. 22 O.S.2001, § 1066. We modify his sentence to twenty years imprisonment with all but the first five years suspended.

**DECISION**

The Petition for a Writ of Certiorari is **DENIED**. The Judgment and Sentence of the District Court is **AFFIRMED as MODIFIED**. We remand this matter to the district court to modify Jinks's sentence to twenty years imprisonment with all but the first five years suspended. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY  
THE HONORABLE JOE H. ENOS, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

DONALD A. HERRING  
3000 UNITED FOUNDERS BLVD.  
SUITE 208  
OKLAHOMA CITY, OK 73112  
ATTORNEY FOR DEFENDANT

**APPEARANCES ON APPEAL**

MARK P. HOOVER  
P. O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR PETITIONER

JOHN WEEDN  
JOSHUA CREEKMORE  
ASSISTANT DISTRICT ATTORNEYS  
STEPHENS COUNTY COURTHOUSE  
DUNCAN, OK 73533  
ATTORNEY FOR STATE

**OPINION BY: A. JOHNSON, J.**  
**LUMPKIN, P.J.: Concur in Part and Dissent in Part**  
**C. JOHNSON, V.P.J.: Concur**  
**CHAPEL, J.: Concur**  
**LEWIS, J.: Concur in Part and Dissent in Part**

RB

**LEWIS, JUDGE, CONCUR IN PART/DISSENT IN PART:**

I agree with the opinion insofar as it denies Appellant's motion to withdraw plea. However, I respectfully disagree with the decision to modify Appellant's sentence. While I agree that Appellant received a severe sentence, I find no legal basis to modify the sentence. Judge Lumpkin has asked to be added to this opinion and joins me in this CIPDIP.