

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CODY WAYNE MAYFIELD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2014-830

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 21 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

Appellant, Cody Mayfield was tried by jury and found guilty of Counts 1 and 2, possession of a controlled dangerous substance, in violation of 63 O.S. Supp.2012, § 2-402; and Count 3, failure to stop at a red light, a misdemeanor, in violation of 47 O.S. 2011, § 11-202, in the District Court of Comanche County, Case No. CF-2013-532.¹ The jury found Appellant guilty after former conviction of two (2) or more felonies and sentenced Appellant to life imprisonment in Counts 1 and 2, and ten (10) days in jail in Count 3. The Honorable Keith B. Aycock, District Judge, pronounced judgment and ordered the sentences served consecutively. Mr. Mayfield appeals in the following propositions of error:

1. Mr. Mayfield's convictions on two counts of possession of a controlled dangerous substance violate the protections against double jeopardy;
2. The trial court erred in admitting some of the irrelevant and highly prejudicial information within the "pen packet;"

¹ The jury acquitted Appellant of the charge in Count 1 of possession of a controlled dangerous substance with intent to distribute, but convicted him of the lesser offense of possession of a controlled dangerous substance.

3. The State failed to prove, beyond a reasonable doubt, that Mr. Mayfield constructively possessed the methamphetamine or cocaine;
4. The trial court erred in admitting the irrelevant and prejudicial photograph of a piece of cellophane;
5. There was insufficient evidence to bind Mr. Mayfield over for trial on both the charge of possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute;
6. Petitioner was denied effective assistance of counsel;
7. Mr. Mayfield's sentence is excessive and should be modified.

Appellant claims in Proposition One that his convictions for possession of two drugs in a single container violate double jeopardy under the holdings of *Watkins v. State*, 1991 OK CR 119, ¶ 6, 829 P.2d 42, 43 and *Lewis v. State*, 2006 OK CR 48, ¶ 10, 150 P.3d 1060, 1063. Despite the failure to object, the State confesses the error. Count 2 is reversed and remanded with instructions to dismiss. No further relief is necessary.

In Proposition Two, Appellant asserts that information within the "pen packet" was erroneously admitted. Appellant failed to object at trial, waiving all but plain error. *Simpson v. State*, 1994 OK CR 40, ¶ 2, 876 P.2d 690, 692-93. To obtain relief, Appellant must show a plain or obvious error affected the outcome of the trial. *Barnard v. State*, 2012 OK CR 15, ¶ 13, 290 P.3d 759, 764. The Court will correct plain error only when it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Barnett v. State*, 2012 OK CR 2, ¶ 3, 271 P.3d 80, 82.

Certain information contained in the pen pack, including evidence of prison disciplinary proceedings, Appellant's religious affiliation, suspended

sentences, early release, and charging details on prior convictions, was erroneously admitted at sentencing. However, considering the remaining evidence of Appellant's criminal record, and the State's lack of emphasis on inadmissible evidence in the closing argument during sentencing, we find the error did not seriously affect the fairness, integrity, or public reputation of the proceedings. Proposition Two is denied.

In Propositions Three and Five, Appellant argues that the evidence was insufficient to bind him over after preliminary examination, or to convict him at trial. The procedure for challenging sufficiency of the evidence to support a magistrate's order of commitment for trial is a motion to quash for insufficient evidence. 22 O.S.2011, § 504.1; *State v. Davis*, 1991 OK CR 123, ¶ 4, 823 P.2d 367, 369. Appellant has waived this claim. Reviewing for plain error, as defined above, we find none.

In his sufficiency challenge to the evidence at trial, Appellant argues the State failed to prove his constructive possession of the drugs beyond a reasonable doubt. The Court must therefore determine "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 204.

Appellant's argument confuses the concept of constructive possession with the sufficiency of the mostly circumstantial evidence to prove his *actual* possession of drugs just before abandoning them in the hope of avoiding

prosecution. Appellant “was not found in actual physical possession of contraband . . . his guilt or innocence must be determined by the inferences which the circumstantial evidence against him properly supports.” *Johnson v. State*, 1988 OK CR 246, ¶ 7, 764 P.2d 530, 532. Circumstantial evidence supports the inference that Appellant actually possessed the drugs discarded along his path of escape, and was guilty as charged. Propositions Three and Five are denied.

Proposition Four claims that the court erroneously admitted a photograph of a piece of cellophane found in Appellant’s car. We review the admission of photographs for abuse of discretion. *Grissom v. State*, 2011 OK CR 3, ¶ 58, 253 P.3d 969, 989. Relevant photographs are admissible if their probative value is not substantially outweighed by the danger of unfair prejudice or other countervailing factors. 12 O.S.2011, §§ 2401, 2403. The photograph was relevant to the issues at trial and properly admitted. Proposition Four is denied.

In Proposition Six, Appellant argues that counsel rendered ineffective assistance by failing to raise his double jeopardy claim, file a motion to quash, object to improper evidence, and an improper reference to Appellant’s addiction in argument. Reviewing these claims according to the deficient performance/prejudice test of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 1064, 80 L.Ed.2d 674 (1984), no relief is warranted. Appellant’s double jeopardy complaint is mooted by dismissal of Count 2. Counsel’s other

alleged deficiencies create no reasonable probability of a different outcome. Proposition Six is denied.

Proposition Seven contends that the remaining life sentence should be modified in the interest of justice. We will not modify a sentence within the statutory range unless under all the facts and circumstances of the case the sentence is “so excessive as to shock the conscience of the Court.” *Watts v. State*, 2008 OK CR 27, ¶ 10, 194 P. 3d 133, 137 (quoting *Freeman v. State*, 1994 OK CR 37, ¶ 38, 876 P.2d 283, 291. Appellant’s remaining life sentence is not shocking to the conscience, given his prior record of criminal activity. Proposition Seven is denied.

DECISION

The judgment and sentence of the District Court of Comanche County in Count 2 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. The remaining counts are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE KEITH B. AYCOCK, DISTRICT JUDGE**

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OPINION BY LEWIS, J.
SMITH, P.J.: Conkurs
LUMPKIN, V.P.J.: Conkurs
JOHNSON, J.: Conkurs
HUDSON, J.: Conkurs

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