

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

DAVID LEE MAYWALD,)
a/k/a DAVID LEE GRAHAM,)
)
Petitioner,)
)
-vs-)
)
STATE OF OKLAHOMA,)
)
Respondent.)

NOT FOR PUBLICATION

No. C-2003-403

FILED
CRIMINAL APPEALS
COURT OF OKLAHOMA

JAN 9 2004

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION DENYING CERTIORARI IN PART AND GRANTING IN PART TO MODIFY THE SENTENCE IN COUNT II

LUMPKIN, JUDGE:

Petitioner David Lee Maywald, aka David Lee Graham, was charged with Failure to Register as a Sex Offender (Count I) (57 O.S.2001, § 582), and Registered Sex Offender Working with or Providing Services to Children (Count II) (57 O.S.2001, § 589), Case No. CF-2002-4778, in the District Court of Tulsa County. On February 28, 2003, Petitioner entered a plea of guilty to each count before the Honorable Rebecca Brett Nightingale, District Judge. The trial court accepted the pleas and sentenced Petitioner, pursuant to a plea agreement, to two (2) years in prison and a five hundred dollar (\$500.00) fine in Count I, and one year in the county jail and a two hundred fifty dollar (\$250.00) fine in Count II, with the sentences to run concurrently. On March 6, 2003, Petitioner filed a *Pro Se* Motion to Withdraw the Plea. At hearings held on March 14 and April 3, 2003, the request to withdraw the pleas was denied. It is that denial which is the

subject of this appeal. Petitioner raises the following propositions of error in support of his appeal.

I. Petitioner should be allowed the option of withdrawing his guilty plea to Count II – Registered Sex Offender Working For a Business that Provides Services for Children, because Petitioner was misadvised of the sentencing range and because the sentence exceeds the statutory maximum.

II. Petitioner should be allowed to withdraw his guilty plea to Count I – Failure to Register as a Sex Offender, because Petitioner was misadvised of the sentencing range. In the alternative, the sentence in Count I should be modified.

III. Petitioner should be allowed to withdraw his guilty plea on Count I because the plea was entered under a misunderstanding of the consequences. If the plea is not withdrawn, the sentence should be clarified to allow credit for time served in the county jail subsequent to sentencing.

After a thorough consideration of these propositions and the entire record before us on appeal, we have determined that modification of the sentence in Count II is the only warranted relief.

In his first proposition of error, we find Petitioner was improperly advised and sentenced to one year in the county jail. Title 57 O.S.2001, § 589 clearly provides for only a fine as punishment. The error in this instance did not affect the knowing and voluntary nature of the guilty plea and warrants only a modification of the sentence to the two hundred fifty dollar (\$250.00) fine imposed.

In Proposition II, we find that in Count I Petitioner was correctly informed of the appropriate range of punishment as it pertained to incarceration but was

misinformed as to the maximum fine allowable. However, his sentence of a five hundred dollar (\$500.00) fine was not only well below the statutory maximum but it was the amount set forth in the plea agreement. Therefore, any error in the advisement and imposition of the fine was harmless error.

In Proposition III, when a defendant claims that his guilty plea was entered through inadvertence, ignorance, and influence or without deliberation, he has the burden of showing that the plea was entered as a result of one of these reasons and there is a defense that should be presented to the jury. *Estell v. State*, 766 P.2d. 1380, 1382 (Okla. Cr. 1988). Here, Petitioner has failed to meet that burden, as he has not pointed to anything in the record, which shows he did not understand what he was directly told on more than one occasion – that he would not get credit for time served in the county jail prior to sentencing. Accordingly, Petitioner is not entitled to withdraw his plea on the grounds he did not understand he would not be given credit for time served.

Further, Petitioner's Judgment and Sentence need not be clarified to reflect the basis upon which he is to receive credit for time served. In stating that Petitioner is not to receive credit for time served, the Judgment and Sentence clearly refers to the time Petitioner spent in jail prior to sentencing. The Judgment and Sentence does not address or implicate the provisions of 57 O.S.2001, § 138 and post-sentencing earned credits. Further, Petitioner's understanding as to earned credits has nothing to do with whether his guilty plea was entered voluntarily. Petitioner's argument merely shows he was disappointed with his sentence. Disappointment with the sentence imposed does

not afford grounds for withdrawal of a plea of guilty. *Loyola v State*, 932 P.2d 22, 34 (Okla. Cr. 1996). Accordingly, Petitioner is not entitled to withdraw his plea on this basis.

Accordingly, **CERTIORARI** is **GRANTED** only as to the modification of the sentence in Count II to a fine only. The remainder of the district court's order denying Petitioner's motion to withdraw plea of guilty is **AFFIRMED** and **CERTIORARI IS DENIED**.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE REBECCA BRETT NIGHTINGALE, DISTRICT JUDGE

APPEARANCES AT TRIAL

TRAVIS GRAFE
1515 EAST 71ST ST., STE. 102
TULSA, OK 74136
COUNSEL FOR PETITIONER AT THE
PLEA HEARING

JOHN C. HARRIS, III
P.O. BOX 52206
TULSA, OK 74152
COUNSEL FOR PETITIONER AT THE
MOTION TO WITHDRAW HEARING

TIM HARRIS
DISTRICT ATTORNEY
JOE PICKARD
CHRISTY HIDY
ASSISTANT DISTRICT ATTORNEYS
500 S. DENVER, STE 900
TULSA, OK 74103
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

S. GAIL GUNNING
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

NO RESPONSE NECESSARY

OPINION BY: LUMPKIN, J.
JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
STRUBHAR, J.: CONCUR

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