

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG 31 2017

DAVID EDWARD MCLAUGHLIN,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION
Case No. C-2017-104

SUMMARY OPINION GRANTING IN PART AND DENYING IN PART
THE WRIT OF CERTIOARI

PER CURIAM:

Petitioner David Edward McLaughlin entered a blind plea of no contest in the District Court of LeFlore County, Case No. CF-2009-340, to Burglary in the Second Degree, After Former Conviction of Nine Felonies (Count 1), in violation of 21 O.S.2011, § 1435, and Unlawful Use of Police Scanner, After Former Conviction of Nine Felonies (Count 2), in violation of 21 O.S.2011, § 1214.¹ The Honorable Brian Henderson, Associate District Judge, accepted McLaughlin’s no contest plea. After receipt of a pre-sentence investigation, the court sentenced McLaughlin to life imprisonment on each of Counts 1 and 2 and imposed a \$5,000.00 fine on Count 2. Although the State had dismissed Count 3 at the plea hearing, the court imposed a sentence of one-year imprisonment and a \$1,000.00 fine on Count 3 at the sentencing hearing. The court ordered the sentences to be served concurrently with each other, but

¹ The State dismissed Count 3, Possession of Burglary Tools (a misdemeanor), at the plea hearing.

consecutively to the sentences McLaughlin was serving in Arkansas. McLaughlin filed a timely motion to withdraw plea that was denied. After several failed attempts to appeal, McLaughlin was granted a certiorari appeal out of time to appeal the order denying his motion to withdraw plea.

McLaughlin raises the following issues:

- (1) whether the district court was without jurisdiction to find petitioner guilty and impose a sentence and a fine on Count 3 at the sentencing hearing;
- (2) whether there was a violation of the Interstate Agreement on Detainers that requires dismissal of this case; and
- (3) whether under the facts and circumstances of this case two life sentences are shockingly excessive.

We find the writ of certiorari must be granted in part and denied in part.

1.

“On *certiorari* review of a guilty plea, our review is limited to two inquiries: (1) whether the guilty plea was made knowingly and voluntarily; and (2) whether the district court accepting the guilty plea had jurisdiction to accept the plea.” *Cox v. State*, 2006 OK CR 51, ¶ 4, 152 P.3d 244, 247, *overruled on other grounds State v. Vincent*, 2016 OK CR 7, 371 P.3d 1127.

McLaughlin correctly argues that the district court was without jurisdiction to impose a sentence on Count 3—Possession of Burglary Tools—at the sentencing hearing because Count 3 had been dismissed at the plea hearing and McLaughlin had entered no plea to Count 3. To rectify this error, we remand the matter to the district court with instructions to vacate the

conviction, sentence and fine on Count 3 and to file a proper Judgment and Sentence.

2.

McLaughlin argues his convictions must be reversed and dismissed because the district court failed to bring him to trial within the time limitations imposed by the Interstate Agreement on Detainers, 22 O.S.2011, §§ 1345-1349. This claim is waived because McLaughlin neither raised it in his motion to withdraw plea and hearing on that motion nor raised it in his Petition for Writ of Certiorari. *See Weeks v. State*, 2015 OK CR 16, ¶¶ 27-29, 362 P.3d 650, 657 (claims not raised in motion to withdraw plea or petition for writ of certiorari are waived). This claim is denied.

3.

McLaughlin's sentence is supported by the facts and circumstances of the case and is within the range of punishment provided by law. This Court will not disturb a sentence within statutory limits unless, under the facts and circumstances of the case, it is so excessive as to shock the conscience of the Court. *Pullen v. State*, 2016 OK CR 18, ¶ 16, 387 P.3d 922, 928. McLaughlin's sentence does not meet that test, and no relief is warranted.

DECISION

The Petition for a Writ of Certiorari is **GRANTED IN PART AND DENIED IN PART**. The Judgment and Sentence of the district court on Counts 1 and 2 is **AFFIRMED**. The Judgment and Sentence on Count 3 is **REVERSED**. The case is **REMANDED** to the district court with instructions to vacate the

conviction, sentence and fine on Count 3 and to file a proper Judgment and Sentence. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF LEFLORE COUNTY
THE HONORABLE BRIAN HENDERSON, ASSOCIATE DISTRICT JUDGE**

**APPEARANCES IN THE
DISTRICT COURT**

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OPINION BY: PER CURIAM
LUMPKIN, P.J.: Concur
LEWIS, V.P.J.: Concur in Results
HUDSON, J.: Concur

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