

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STEPHEN ELDRIDGE MELONAKIS,)
)
Appellant,)
v.)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION
Case No. F-2002-233

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 21 2003

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

CHAPEL, JUDGE:

Stephen Eldridge Melonakis was tried by jury and convicted of Count II, Falsely Personating Another in violation of 21 O.S.2001, § 1531(4), After Former Conviction of Two or More Felonies, in the District Court of Washington County, Case No. CF-2001-537.¹ In accordance with the jury's recommendation the Honorable John G. Lanning sentenced Melonakis to four (4) years imprisonment. Melonakis appeals from this conviction and sentence.

Melonakis raises three propositions of error in support of his appeal:

- I. Because Melonakis did not impersonate "another", and because he did no "other act" aside from giving a false name, his conviction should be reversed for insufficient evidence;
- II. Melonakis's right to equal protection of law was violated when the trial court failed to grant him credit for time served prior to trial, thus forcing him to serve more time than a defendant who had the financial means to make bail; and
- III. Melonakis's right to be free from unreasonable search and seizure was violated, therefore, the evidence against him should have been suppressed.

¹ Melonakis was acquitted of Count I, Attempting to Manufacture a Controlled Dangerous Substance (Methamphetamine).

After thorough consideration of the entire record before us on appeal including the original record, transcripts, exhibits and briefs, we find neither reversal nor modification are required by the law and evidence. We find in Proposition I that false personation is proved where evidence shows a defendant intentionally assumes the character of another person, real or fictitious, and gains a benefit such as avoiding arrest.² We find in Proposition II that Melonakis's right to equal protection was not violated when he failed to receive credit for time served.³ However, in the interests of justice we agree this proposition should be granted, and modify Melonakis's sentence to reflect credit for time served awaiting trial.⁴ We find in Proposition III that Melonakis lacks standing to challenge the search and seizure which led to his arrest.⁵

Decision

The Judgment of the District Court is **AFFIRMED**. The Sentence is **MODIFIED** to reflect credit for time served awaiting appeal.

² *Barkus v. State*, 1996 OK CR 45, 926 P.2d 312, 313; *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202, 203-04.

³ *Hall v. Furlong*, 77 F.3d 361, 364 (10th Cir. 1996); *Vasquez v. Cooper*, 862 F.2d 250 (10th Cir. 1988); *Williams v. Illinois*, 399 U.S. 235, 240-41, 90 S.Ct. 2018, 2021-22, 26 L.Ed.2d 586 (1970) (impermissible discrimination based on inability to pay occurs when defendant's total imprisonment resulting solely from involuntary inability to pay a fine or court costs exceeds the maximum statutory term). Our decision in *Ex Parte Williams*, 63 Okl.Cr. 395, 75 P.2d 904, 909 (Okl.Cr.1938), involved credit for time served on a sentence already imposed.

⁴ 20 O.S.2001, § 3001.1.

⁵ *Anderson v. State*, 1999 OK CR 44, 992 P.2d 409, 417, *cert. denied*, 531 U.S. 850, 121 S.Ct. 124, 148 L.Ed.2d 79 (2000).

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OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR IN PART/DISSENT IN PART
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART
STRUBHAR, J.: CONCUR

LILE, VICE PRESIDING JUDGE: CONCURS IN PART/DISSENTS IN PART

The Court cites no statutory or case law authority for its modification of Appellant's sentence. There is none. Justice would be better served by affirming the trial court, which certainly knew more about the Appellant than this Court can. I would affirm.

I am authorized to state that Judge Lumpkin joins in this special vote.