

FILED  
 IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA  
 MAY 10 2001  
 JAMES W. PATTERSON  
 CLERK

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

DONALD GEAN MILLER,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. F-2000-692
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**LILE, JUDGE:**

Appellant, Donald Gean Miller, was convicted at a jury trial of Count I - Escape from the County Jail (21 O.S.Supp.1999, § 443(A)) and Count II - Injury to a Public Building (21 O.S.Supp.1999, § 349) in Case No. CRF-99-184 in the District Court of Okmulgee County. Appellant was charged with having two previous felony convictions. The Honorable Charles W. Humphrey, District Judge, sentenced Appellant, in accordance with the jury verdict, to two hundred (200) years imprisonment on Count I and fifty (50) years imprisonment on Count II. The sentences were ordered to be served consecutively. Appellant has perfected this appeal.

Appellant raises the following propositions of error in support of his appeal:

- I. The trial judge erred by refusing to grant a mistrial after Mr. Miller was seen in shackles by jury members.

II. The simultaneous convictions for escape and injuring a public building violated the statutory prohibition on double punishment.

III. The sentences were excessive.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts and briefs of the parties, we have determined that modification is required under the facts and the law.

With regard to Proposition I, we find that there was no abuse of discretion in denying the motion for a new trial. *Knighton v. State*, 1996 OK CR 2, ¶64, 912 P.2d 878, 894. Concerning Proposition II, we find no double jeopardy violation. *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed.2d 306, 309 (1932). Also, we find no violation of Oklahoma's double punishment statute. 21 O.S.Supp.1999, § 11; *Davis v. State*, 1999 OK CR 48, 993 P.2d 124. We agree under Proposition III that the sentence is excessive because it shocks the conscience of the court. The sentence herein is modified to provide that the sentences on both counts shall run concurrently.

#### **DECISION**

The judgment and sentence in Count I is **AFFIRMED**. The judgment in Count II is **AFFIRMED**, however, the sentence is **MODIFIED** to run concurrently with Count I.

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**OPINION BY: LILE, J.**

**LUMPKIN, P.J.: CONCURS**  
**JOHNSON, V.P.J.: CONCURS**  
**CHAPEL, J.: CONCURS IN PART/DISSENTS IN PART**  
**STRUBHAR, J.: CONCURS**

**RB**

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**CHAPEL, J., CONCURRING IN PART AND DISSENTING IN PART:**

I concur in affirming the escape conviction (Count I). I would, however, modify the sentence from 200 years to 45 years. I dissent to affirming the Injury to a Public Building conviction (Count II) as it violates 21 O.S.Supp.1999, § 11.