

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DESEAN TERRELL POORE,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2003-22

STATE OF OKLAHOMA

JAN 14 2004

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

JOHNSON, PRESIDING JUDGE:

Appellant, Desean Terrell Poore, was tried jointly with his brother, Delvone Scoggins Poore, in Tulsa County District Court Case No. CF-2002-2259 for two counts of First Degree (Malice) Murder (21 O.S.2001, § 701.7). The jury found Appellant guilty of Accessory After the Fact to First-Degree Murder in Count 1, and Accessory After the Fact to First-Degree Manslaughter in Count 2.¹ In accordance with the jury's recommendation, on December 12, 2002, the Honorable Thomas C. Gillert, District Judge, sentenced Appellant to fifteen years imprisonment on Count 1, and to ten years imprisonment on Count 2. The sentences were ordered to be served consecutively. Appellant then timely filed this appeal.

Appellant raises the following propositions of error:

1. Appellant's conduct supports only a single conviction for Accessory After the Fact; therefore one of his two convictions for this offense must be vacated.
2. Although the maximum sentence for Accessory After the Fact to Manslaughter was not more than two years, the trial court instructed that the sentence was not more than 37.5 years; therefore the Court

¹ Co-defendant Delvone Poore was found guilty of one count of First Degree Murder and one count of First Degree Manslaughter.

should modify the ten-year sentence imposed on Appellant.

3. The decision to run Appellant's sentences consecutively resulted in an excessive sentence and should be modified.
4. The Judgments and Sentences should be modified to accurately state the sentences imposed.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse in part and remand. As to Proposition 1, the jury rejected evidence suggesting that Appellant was complicit in the homicides, but found him guilty of aiding the killer after the homicides were committed. The crime of Accessory After the Fact focuses on the defendant's conduct "after the commission of any felony" by another person. 21 O.S.2001, § 173. The evidence supporting the jury's conclusion that Appellant was nothing more than an accessory to the killings was the same relative to both victims: the act of driving the killer away from the scene. Under these facts, Appellant's multiple convictions for Accessory After the Fact constitute double punishment for a single course of action. 21 O.S.2001, § 11; *cf. Jones v. State*, 1998 OK CR 36, ¶ 5, 965 P.2d 385, 386 (multiple convictions for Conspiracy to Commit Murder constituted double punishment, where evidence showed a single agreement to kill two victims). Accordingly, Count 2 (Accessory After the Fact to First Degree Manslaughter) is hereby **REVERSED WITH INSTRUCTIONS TO DISMISS**. Our decision with respect to Proposition 1 renders Propositions 2 and 3 moot. As to Proposition 4, the State concedes a clerical error in the Judgment and Sentence, as Appellant was not convicted After Former Conviction of a Felony. Therefore, the case is **REMANDED** to the District Court of Tulsa County for an Order *Nunc Pro Tunc* to remove the reference in the Judgment and Sentence to any prior felony conviction. *Mathues v. State*, 1996

OK CR 29, ¶ 4, 925 P.2d 64, 65.

DECISION

The Judgment and Sentence as to Count 2 is **REVERSED WITH INSTRUCTIONS TO DISMISS**, and the cause is **REMANDED** to the District Court for an Order *Nunc Pro Tunc* regarding Count 1.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE THOMAS C. GILLERT, DISTRICT JUDGE

APPEARANCES AT TRIAL

MARK D. MATHESON
ATTORNEY AT LAW
2 W. 6th STREET
TULSA, OK 74119
ATTORNEY FOR DEFENDANT

LARRY R. EDWARDS
JULIE C. DOSS
ASSISTANT DISTRICT ATTORNEYS
500 S. DENVER, ROOM 406
TULSA, OK 74103
ATTORNEYS FOR THE STATE

OPINION BY JOHNSON, P.J.

LILE, V.P.J.: CONCURS
LUMPKIN, J.: CONCURS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS

APPEARANCES ON APPEAL

THOMAS PURCELL
INDIGENT DEFENSE SYSTEM
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
KELLYE BATES
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE