

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

ANDRE KEITH REED,)
)
 Appellant,)
)
 -vs-)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
No. F-2003-1252

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 22 2004

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

STRUBHAR, J.:

Andre Keith Reed, Appellant, was tried by jury in Oklahoma County District Court, Case No. CF-2002-310, for the crimes of Count 1 – First Degree Murder, Count 2 – Possession of a Firearm After Former Conviction of a Felony, AFCF and Count 3 – Possession of a Firearm After Former Conviction of a Felony, AFCF. The Honorable Virgil C. Black, who presided at trial, declared a mistrial as to Count 1 after the jury could not reach a verdict. Following the mistrial, the State dismissed Count 2, the felon in possession charge related to the homicide. The jury convicted Appellant on Count 3 and recommended a life sentence. The trial court sentenced Appellant accordingly. From this judgment and sentence, he appeals.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs of the parties, we affirm Appellant’s conviction, but find modification of his sentence is warranted. The following proposition of error was considered:

- I. The trial court's error in failing to order a mistrial on each of the charged offenses in this case after the jury was unable to reach a verdict on the first degree murder charge resulted in a life sentence for felonious possession of a firearm, a sentence that is excessive, disproportionate, cruel and/or unusual punishment driven by passion and prejudice, in violation of the United States Constitution and Constitution of the State of Oklahoma.

As to sole proposition, we find the trial court did not abuse its discretion in denying Appellant's request for a mistrial and that the tri-stage trial was proper. *Knighon v. State*, 912 P.2d 878, 894 (Okl.Cr.1996), *cert. denied*, 519 U.S. 841, 117 S.Ct. 120, 136 L.Ed.2d 71 (1996); *Chapple v. State*, 866 P.2d 1213, 1216-17 (Okl.Cr.1993); 22 O.S.2001, § 860.1. We do find under the circumstances of this case that the life sentence imposed for the crime committed shocks our conscience and that modification is the appropriate remedy. *Rea v. State*, 34 P.3d 148, 149 (Okl.Cr.2001). Accordingly, we find Appellant's life sentence should be modified to twenty (20) years imprisonment. 22 O.S.2001, § 1066.

DECISION

The Judgment of the trial court is **AFFIRMED**. The Sentence imposed is **MODIFIED** to twenty (20) years imprisonment.

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OPINION BY: STRUBHAR, J.

JOHNSON, P.J.: CONCUR

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

LUMPKIN, J.: CONCUR IN RESULT

CHAPEL, J.: CONCUR