

APR 20 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

CLARENCE EDWARD REED,)
)
 Appellant,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. F-2003-405

SUMMARY OPINION

CHAPEL, JUDGE:

Clarence Edward Reed was tried by jury for the crime of Unlawful Possession of Controlled Drug with Intent to Distribute, After Former Conviction of Two or More Felonies, under 63 O.S.Supp.2002, § 2-401, in Tulsa County, Case No. CF-2002-2477. Reed was convicted of the lesser offense of Unlawful Possession of Controlled Drug, After Former Conviction of Two or more Felonies, under 63 O.S.2001, § 2-402.¹ In accordance with the jury's recommendation, the Honorable Jefferson D. Sellers sentenced Reed to imprisonment for eight (8) years. Reed appeals this sentence.

Reed raises the following proposition of error:

The sentence imposed against Mr. Reed is excessive and should be favorably modified.

This Court finds that because Reed's jury was wrongly instructed that it could consider Reed's six prior convictions in the determination of his sentence,

after the trial court specifically ruled that Reed could be sentenced based upon only three of these prior convictions—because the others were transactional—Reed’s sentence should be modified to imprisonment for six (6) years.²

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that although reversal of Reed’s conviction is not required by the law and evidence, his sentence should be modified.

Decision

Reed’s **CONVICTION** for Unlawful Possession of Controlled Drug, After Former Conviction of Two or more Felonies, is **AFFIRMED**, but his **SENTENCE** is **MODIFIED** to imprisonment for six (6) years.

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¹ Reed was also charged, in CF-2002-2477, with the misdemeanor offense of Improper Use of Lane, under 47 O.S.2001, § 11-307. He was convicted by the trial court of this offense and sentenced to a fine of \$20. Reed does not appeal this conviction or sentence.

² See 22 O.S.2001, § 1066.

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR

LILE, V.P.J.: CONCUR IN RESULTS

LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART

STRUBHAR, J.: CONCUR