

AUG 20 2003

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**  
**MICHAEL S. RICHIE**  
**CLERK**

MUHAJIR A. SANGO,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. F-2002-613
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

**LILE, VICE PRESIDING JUDGE:**

Appellant, Muhajir A. Sango, was convicted at jury trial of Unlawful Possession of a Controlled Dangerous Substance with Intent to Distribute, after Former Conviction of Two or More Drug Felonies, in the District Court of Oklahoma County, Case No. CF-2000-6130, before the Honorable Twyla Mason Gray, District Judge. In accordance with the jury verdict, Judge Gray sentenced Appellant to thirty (30) years imprisonment and a fine of \$10,000. Appellant has perfected his appeal to this Court.

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

1. The State's introduction of irrelevant evidence, which showed gang affiliation by Appellant and suggested Appellant was guilty of uncharged crimes, was improper and denied Appellant a fair trial.
2. Trial counsel's failure to object to the introduction of irrelevant and highly prejudicial evidence of gang membership and gang activities deprived Appellant of the effective assistance of counsel.

3. The trial court's erroneous instructions on the range of punishment resulted in the jury imposing a sentence longer than it otherwise would have.

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, because of the instructional error alleged in proposition three, this case should be remanded for resentencing.

In proposition three, we find that the trial court failed to instruct the jury on the proper range of punishment found in 63 O.S.Supp.2000, 2-401(C), for habitual drug offenders which is not less than ten years nor more than life imprisonment. Instead the trial court instructed that the range of punishment was not less than twenty years nor more than life imprisonment. Therefore, this case should be remanded for resentencing. *Scott v. State*, 1991 OK CR 31, ¶ 17, 808 P.2d 73, 78, (“Any attempt to compute a proper sentence mathematically is futile, or worse, lends an air of apparent certainty to mere speculation”).

In propositions one and two, we find that the evidence and the prosecutors statements were not met with contemporaneous objections; therefore, we will review for plain error only. *Ochoa v. State*, 1998 OK CR 41, ¶ 36, 963 P.2d 583, 597. There was no plain error here. We further find that trial counsel's conduct did not amount to ineffective assistance of counsel. The evidence did not affect the finding of guilt; therefore, Appellant cannot meet the

prejudice prong of *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Because, we are remanding this case for resentencing, we need not determine if the evidence affected Appellant's sentence.

### **DECISION**

The Judgment of the district court is **AFFIRMED**. However, the Sentence shall be **REVERSED** and this case shall be **REMANDED** for **RESENTENCING**.

#### **ATTORNEYS AT TRIAL**

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#### **OPINION BY: LILE, V.P.J.**

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

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