

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

GARY THOMAS SCHOFIELD, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

**NOT FOR PUBLICATION**

No. C 2015-980

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

APR 26 2016

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION DENYING CERTIORARI**  
**AND MODIFYING SENTENCE IN COUNT III.**

**LUMPKIN, VICE-PRESIDING JUDGE:**

Petitioner Gary Thomas Schofield was charged with Driving Under the Influence of Intoxicants (Count I) (47 O.S.Supp.2000, § 11-902); Driving Under Suspension (Count II) (47 O.S.Supp.1993, § 6-303) and Failure to Use Child Restraint (Count III) (47 O.S.Supp.1995, § 11-1112) in the District Court of Rogers County, Case No. CM-2000-798. On September 21, 2015, Petitioner entered *nolo contendere* pleas to each count before the Honorable Terrell Crosson, Special Judge. The pleas were accepted and Petitioner was sentenced in Counts I and II to concurrent sentences of ninety days in the county jail, with credit for time served only in the Rogers County Jail, and costs. In Count III, a fifty (\$50.00) fine was imposed and costs. On September 29, 2015, Petitioner filed an *Application to Withdraw Cold Plea of No Contest and Reinstate Trial Rights*. At a hearing held on October 26, 2015, with Petitioner represented by counsel, the motion to withdraw was denied. It is that denial which is the subject of this

appeal. Petitioner raises the following proposition of error in support of his appeal.

- I. Petitioner's sentence on Count 3 violates the 14<sup>th</sup> Amendment to the United States Constitution and Art. II, § 7 of the Oklahoma Constitution, because the fine imposed exceeded the statutory maximum.

After thorough consideration of this proposition and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that under the law, certiorari should be denied but the sentence in Count III should be modified.

In his sole proposition of error, Petitioner contends that the \$50.00 fine assessed in Count III is illegal as beyond the statutory maximum. At the time of the commission of the crimes in this case, August 2000, the punishment for violating the Child Restraint law was a fine of \$10.00 with a maximum of \$15.00 court costs. 47 O.S.Supp.2000, § 11-1112.

Petitioner failed to raise this claim in his motion to withdraw. Rules 4.2(B) and 4.3(C)(5), *Rules of the Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016) provide that no matter may be raised in the petition for a writ of certiorari filed with this Court unless the same has been raised in the application to withdraw the plea filed with the District Court. The failure to properly raise issues before this Court typically acts as a waiver of those issues on appeal. *Walker v. State*, 1998 OK CR 14, ¶ 3, 953 P.2d 354, 355.

However, a penalty exceeding the maximum is plainly illegal and will be modified by this Court. *Fite v. State*, 1993 OK CR 58, ¶ 7, 873 P.2d 293, 295

citing *Gaines v. State*, 1977 OK CR 259, ¶¶ 16-17, 568 P.2d 1290, 1294.

Therefore, the fine in this case is modified to the maximum allowed by statute in force at the time of the crime - \$10.00.

### DECISION

The order of the district court denying Petitioner's motion to withdraw *nolo contendere* pleas is **AFFIRMED. The \$50.00 fine imposed in Count III is MODIFIED to \$10.00.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE is ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF ROGERS COUNTY  
THE HONORABLE TERRELL COSSON, SPECIAL JUDGE

#### APPEARANCES IN DISTRICT COURT      APPEARANCES ON APPEAL

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NO RESPONSE NECESSARY

**OPINION BY: LUMPKIN, V.P.J.**

SMITH, P.J.: Concur

LEWIS, J.: Concur

JOHNSON, J.: Concur

HUDSON, J.: Concur

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