

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

EDWARD CHARLES SCOTT, IN COURT OF ORIGINAL APPEALS
STATE OF OKLAHOMA

Petitioner,

SEP - 4 2003

NOT FOR PUBLICATION

-vs-

MICHAEL S. RICHIE, CLERK No. C-2003-298

STATE OF OKLAHOMA,

Respondent.

**SUMMARY OPINION AFFIRMING DENIAL OF MOTION TO WITHDRAW
GUILTY PLEAS AND REMANDING FOR RESENTENCING**

LUMPKIN, JUDGE:

Petitioner Edward Charles Scott was charged with two counts of Distribution of Controlled Dangerous Substance (Counts I and III) (63 O.S. 1991, § 2-401(A)); and Conspiracy to Distribute Controlled Dangerous Substance (Count II) (63 O.S. 1991, § 2-408), Case No. CF-2001-24, in the District Court of Stephens County. On November 19, 2001, Petitioner entered a plea of guilty to all three charges before the Honorable George W. Lindley, District Judge. The trial court accepted the pleas and on January 7, 2002, sentenced Petitioner to forty (40) years imprisonment in each count, with the sentences to run concurrently. The judge also imposed a fine of \$2,500 in each count. On January 10, 2002, Petitioner filed a Motion to Withdraw the Plea. A hearing was held on the motion on January 23, 2002, at which time the court denied the request to withdraw.

On February 13, 2002, Petitioner filed a *pro se Motion to Withdraw Plea*. On July 18, 2002, Petitioner filed a *pro se Application for Post-Conviction Relief*. On

July 29, 2002, the District Court concluded that trial counsel had failed to properly perfect the appeal and recommended Petitioner be given an appeal out of time. On February 14, 2003, this Court granted Petitioner an appeal out of time. Petitioner's appeal brief was filed with this Court on June 11, 2003. In order to provide a complete review of the issues raised by Petitioner and to assist in the resolution of the same, this Court ordered a response from the District Attorney's Office. This response was timely filed on July 29, 2003. We now review the following propositions of error raised by Petitioner in support of his appeal.

I. The trial court erred by not appointing new counsel for Petitioner when there was an allegation of ineffective assistance of counsel.

II. Petitioner should be allowed to withdraw his pleas because the record shows that the pleas were the result of misunderstanding and ignorance.

III. The sentences were excessive.

IV. The trial court erred by not sufficiently inquiring into Petitioner's competence to enter the pleas.

V. The trial judge failed to establish a factual basis for the plea of conspiracy to distribute a controlled dangerous substance.

After a thorough consideration of these propositions and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that reversal is not required. However, the case should be remanded for resentencing.

In Proposition I, we find Petitioner has failed to show that an actual conflict of interest adversely affected counsel's performance. *See Carey v. State*, 902 P.2d 1116, 117 (Okl.Cr.1995).

In Proposition II, Petitioner has failed to show that his pleas were entered through inadvertence, ignorance, influence or without deliberation, and that he has a defense that should be presented to a jury. *Estell v. State*, 766 P.2d. 1380, 1382 (Okl.Cr.1988). Petitioner admitted his guilt throughout the proceedings and never offered any defense for his criminal conduct. Petitioner was informed of the proper range of punishment. His only complaint is that he received more prison time than he thought he was to receive. Disappointment with the sentence imposed does not afford grounds for withdrawal of a plea of guilty. *Loyoza v State*, 932 P.2d 22, 34 (Okl.Cr.1996). The record clearly shows that Petitioner voluntarily entered guilty pleas to the charged offenses.

In Proposition III, we find that inconsistent statements in the record concerning whether Petitioner was sentenced as a habitual offender necessitate remanding this case for resentencing. Certain statements made during the proceedings indicate the prior convictions contained on the second page of the felony information were to be dismissed and Petitioner was to be sentenced as a first time offender. However, other statements indicate the prior convictions were used in determining Petitioner's sentence as a habitual offender.¹ While the

¹ These inconsistent statements were found not only in the transcripts of the hearings on the entry of the plea and the application to withdraw the plea, but also in the Summary of Facts/Guilty Plea form, i.e. the Court cannot determine from this record if the sentencing judge set the sentence based on the range of punishment being 2 years to life in prison or still considered the range to be a minimum of 20 years pursuant to 21 O.S.2001, § 51. While the judge can consider a defendant's prior record as a part of sentencing, under the facts of this

length of sentence imposed is within the range for both a first time offender and a habitual offender, the basis for this punishment is not clear from the record. Accordingly, this case is a remanded to the District Court of Stephens County for resentencing.

In Proposition IV, we find that while the trial court's initial inquiry of Petitioner at the plea hearing concerning his mental ability to enter a guilty plea could certainly have been more thorough, the record when taken in its entirety, shows Petitioner was mentally competent to enter his plea. The Summary of Facts form shows Petitioner had never been treated for a mental illness, and there is nothing in the record to indicate that his attorney had any reason to believe Petitioner was not mentally competent or capable of understanding the nature of the charges against him. In light of this record, we find Petitioner's competence to enter his guilty pleas was sufficiently established. *See Lozoya*, 932 P.2d at 33.

In Proposition V, we find a factual basis for the plea was sufficiently established. *Estell*, 766 P.2d at 1384. *See also Lozoya*, 932 P.2d at 33.

The order of the district court denying Petitioner's motion to withdraw plea of guilty is **AFFIRMED** and the case is **REMANDED FOR RESENTENCING**.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY
THE HONORABLE GEORGE W. LINDLEY, DISTRICT JUDGE

case, the state had dismissed the after former convictions on Page 2 and the sentencing range was 2 years to life. *See Malone v. State*, 58 P.3d 208, 209-210 (Okl.Cr.2002).

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OPINION BY: LUMPKIN, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR IN RESULT
CHAPEL, J.: CONCUR IN RESULT
STRUBHAR, J.: CONCUR

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