

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

INEZ LEE SHAW,)
)
Petitioner,)
v.)
THE STATE OF OKLAHOMA,)
)
Respondent.)

Case No. C-2007-717
NOT FOR PUBLICATION

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 31 2008

SUMMARY OPINION DENYING WRIT OF CERTIORARI MICHAEL S. RICHIE
CLERK

CHAPEL, JUDGE:

Inez Lee Shaw was charged in the District Court of Kiowa County, Case No. CF-2006-62, by Information, with Knowingly Concealing Stolen Property, under 21 O.S.2001, § 1713(A) (Counts I, II, III, IV, & V); Possession of Firearms After Conviction or During Probation, under 21 O.S.2001, § 1283(A) (Count VI); and a misdemeanor count of Possession of Controlled Substance (marijuana), under 63 O.S.Supp.2005, § 2-402 (Count VII). The State subsequently dismissed Count VI of CF-2006-62, to refile it in a separate case, and filed a new Information in the District Court of Kiowa County, Case No. CF-2006-124, charging Shaw with three counts of Possession of Firearms After Conviction or During Probation, under 21 O.S.2001, § 1283(A) (Counts I, II, & III).¹

¹ Count VI of CF-2006-62 involved the possession of a Raven Arms .25 caliber automatic pistol. Count I of CF-2006-124 involved the possession of this same weapon. Count II of CF-2006-124 involved the possession of a 12 gauge over and under ventilated rib shotgun, and Count III of this case involved the possession of a .22 caliber rifle. The original count and the later three counts all referenced the same prior conviction for Shaw, a 2004 conviction for Assault and Battery with a Dangerous Weapon, in Kiowa County, Case No. CF-2002-88A.

On March 13, 2007, the day CF-2006-124 was scheduled for trial, the State agreed to dismiss Counts II and III in CF-2006-62, and Shaw entered a blind plea of no contest to Counts I, IV, V, and VII in CF-2006-62, and to Counts I, II, and III in CF-2006-124, before the Honorable Richard B. Darby.

On June 6, 2007, the Honorable Richard B. Darby sentenced Shaw, in CF-2006-62, to imprisonment for ten (10) years each on Count I, IV, and V, and imprisonment for one (1) year on Count VII, with all four counts to be served concurrently. In CF-2006-124, the Honorable Richard B. Darby sentenced Shaw to imprisonment for five (5) years on Count I, and a suspended sentence of ten (10) years on both Count II and Count III, all to be served consecutively to each other and to CF-2006-62.² Shaw is now properly before this Court on a petition for certiorari, seeking to withdraw her no-contest pleas in both cases or to have her judgment and sentences modified.

Shaw raises the following propositions of error:

- I. MS. SHAW HAS BEEN SUBJECTED TO MULTIPLE PUNISHMENTS, WHICH REQUIRES THE DISMISSAL OF COUNTS II AND III IN DISTRICT COURT CASE NO. CF-2006-124.
- II. MS. SHAW WAS DENIED HER CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN ENTERING HER PLEAS OF GUILTY PETITIONER'S RIGHT TO BE FREE FROM DOUBLE JEOPARDY WAS VIOLATED.

In Proposition I, Shaw raises a "double punishment" claim under Section 11 of Oklahoma's Title 21.³ She argues that it violated Section 11 to convict her

² Shaw was also ordered to pay costs, fees, fines, and Victim Compensation Assessments in both cases. None of these costs, fees, fines, or assessments are challenged in Shaw's petition.

³ 21 O.S.2001, § 11. Although Shaw's brief mentions double jeopardy generally, cites some double jeopardy cases, and argues that double jeopardy claims cannot be waived (because they are jurisdictional), her actual claim involves only the prohibition against double punishment and is based entirely on Oklahoma's Section 11.

of three separate counts in CF-2006-124, for possession of the three guns found in her home, because the possession of these guns was essentially “the same act.”⁴ Because this claim was not raised in Shaw’s applications to withdraw her pleas, at the evidentiary hearing regarding these applications, or in her petitions for certiorari, it has been waived and will be reviewed only for plain error.⁵

It was not plain error to allow Shaw to plead no contest and be convicted of three different counts of Possession of Firearms After Conviction or During Probation, under 21 O.S.2001, § 1283(A). The three different counts involved three different guns (a pistol, a shotgun, and a rifle), which were found in three different locations in and around Shaw’s home (in a bedroom, in an outbuilding, and in the attic), which apparently came from three different sources (two of which were specifically linked to thefts from different victims).⁶ Shaw’s undeveloped, corollary claim that her counsel was ineffective for failing to properly preserve this claim is rejected as well. Shaw has not established either that counsel’s performance was inadequate or that she was prejudiced thereby.⁷

In Proposition II, Shaw argues that she received ineffective assistance of counsel at the time she entered her no-contest pleas (1) because of inadequate or confusing communications from her counsel, (2) because her counsel did not

⁴ *Id.*; see *Davis v. State*, 1999 OK CR 48, ¶¶ 6-14, 993 P.2d 124, 125-27 (summarizing analysis of claims raised under Oklahoma’s Section 11)

⁵ See Rules 4.2 and 4.3(C), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007); *Medlock v. State*, 1994 OK CR 65, ¶ 24, 887 P.2d 1333, 1342 (issues not raised within application to withdraw plea reviewed for plain error only).

⁶ Even if Shaw had properly preserved this claim, she has not established that her convictions in CF-126-124 violated either general principles of double punishment or Section 11.

⁷ See ineffective assistance analysis and citations within Proposition II below.

realize how many prior felony convictions Shaw had at the time of her pleas (making her ineligible for a suspended sentence), and (3) because Shaw did not fully understand the blind pleas she was entering. In order to establish such a claim and be permitted to withdraw her pleas, Shaw must establish that her counsel's performance was inadequate and that she was prejudiced thereby.⁸

Shaw cannot establish ineffective assistance regarding any of her claims. Although the record in this case contains evidence that Shaw was dissatisfied with her attorney's performance prior to the time of her no-contest pleas, including letters to the trial court about this issue, at the time of the taking of Shaw's pleas, her counsel addressed this issue specifically.⁹ Shaw fails to establish either inadequate performance or prejudice in this regard.

Regarding Shaw's claim about her prior felony convictions, the record of her guilty plea hearing clearly shows that the prosecutor, defense counsel, and the trial court all believed that Shaw had only two prior felony convictions (neither of which was charged in a second page in either case). By the time of Shaw's actual sentencing, her PSI had revealed that she actually had five prior felony convictions. Shaw cannot establish ineffective assistance in this regard when she herself failed to inform her attorney regarding the full scope of her criminal past, particularly since Shaw specifically agreed that a PSI would be

⁸ See *Strickland v. Washington*, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Hill v. Lockhart*, 474 U.S. 52, 58-60, 106 S.Ct. 366, 370-71, 88 L.Ed.2d 203 (1985) (ineffective assistance claims in guilty plea context).

prepared in the case before she was sentenced.¹⁰

Furthermore, the record in this case supports the trial court's ruling that Shaw fully understood the meaning and significance of her blind no-contest pleas. Shaw fails to establish either inadequate performance or resulting prejudice. All of her ineffective assistance claims are rejected accordingly.

Nevertheless, this Court finds that Shaw is entitled to a modification of her sentence in Case No. CF-2006-62. The maximum prison sentence for the crime of Knowingly Concealing Stolen Property, under 21 O.S.2001, § 1713(A), is imprisonment for five (5) years.¹¹ The Information filed in CF-2006-62 incorrectly stated that this crime was "punishable by imprisonment for up to 10 years"; and this error was repeated throughout the proceedings in this case. Because the maximum prison sentence for this crime is five years, not ten years, the ten-year sentences given Shaw on Counts I, IV, and V of CF-2006-62 were illegal and cannot be affirmed. Consequently, the sentences on each of these three counts will be modified to imprisonment for five (5) years.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that the terms of imprisonment for the three counts of Knowingly

⁹ Shaw testified, in response to questions from her counsel, that despite her earlier complaints, Shaw was satisfied with her counsel and believed she was representing her effectively, that she had talked with her counsel about trial strategy, and that she believed her counsel was prepared for jury trial that day.

¹⁰ It should also be noted that the State agreed to waive the prohibition against giving Shaw any suspended sentences, and that the trial court suspended two of her sentences, even though she was not eligible for the suspension of her sentences due to her criminal history.

Concealing Stolen Property, in CF-2006-62, must be modified to imprisonment for five (5) years.

Decision

The Petition for Writ of Certiorari is **DENIED**. However, the terms of imprisonment for Counts I, IV, and V, in CF-2006-62, for Knowingly Concealing Stolen Property, under 21 O.S.2001, § 1713(A), are hereby **MODIFIED** from imprisonment for ten (10) years to imprisonment for five (5) years. In all other respects, the Judgment and Sentences in CF-2006-62 and CF-2006-124 are hereby **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

ATTORNEYS AT TRIAL

JANET L. COX
ATTORNEY AT LAW
401 N. HUDSON
OKLAHOMA CITY, OKLAHOMA 73102
ATTORNEY FOR DEFENDANT AT PLEA

GERALD E. WEIS
OKLAHOMA INDIGENT DEFENSE
P.O. BOX 1494
CLINTON, OKLAHOMA 73601
ATTORNEY FOR DEFENDANT ON
WITHDRAWAL OF PLEA

RICKY A. MARSH
MATTHEW SALTER
ASSISTANT DISTRICT ATTORNEYS
316 S. MAIN

ATTORNEYS ON APPEAL

KATRINA CONRAD-LEGLER
APPELLATE DEFENSE COUNSEL
P.O. BOX 926
NORMAN, OKLAHOMA 73070
ATTORNEY FOR PETITIONER

NO RESPONSE REQUIRED

¹¹ See 21 O.S.2001, § 1713(A) (“punishable by imprisonment in the State Penitentiary not to exceed five (5) years . . .”).

KIOWA COUNTY COURTHOUSE
HOBART, OKLAHOMA 73651
ATTORNEYS FOR THE STATE

OPINION BY: CHAPEL, J.

LUMPKIN, P.J.: CONCUR
C. JOHNSON, V.P.J.: CONCUR
A. JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR