

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

RONYELL LAMAR SHELTON, )  
 )  
 Petitioner, )  
 )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION

No. C-2003-1382

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

DEC 3 2004

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**STRUBHAR, JUDGE:**

Petitioner, Ronyell Lamar Shelton, entered a guilty plea in the District County of Cleveland County, Case No. CF-2002-1755, to Conspiracy to Commit a Felony (Count I), Robbery with a Firearm (Counts II and III) and Knowingly Concealing Stolen Property (Counts IV and V), each after former conviction of a felony. He was also convicted of Unlawful Possession of a Firearm (Count VI). Petitioner's plea was accepted by the Honorable Tom A. Lucas. Petitioner was sentenced to thirty years imprisonment on each of Counts I - III, and ten years imprisonment on each of Counts IV - VI. The trial court ordered Petitioner's sentences on Counts II - VI to run concurrently with each other and consecutively to Count I. Petitioner filed a timely motion to withdraw his plea. This motion was denied and Petitioner appeals this ruling.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm the

district court's ruling regarding Counts I, II, III and VI. We reverse Count IV with instructions to dismiss and we allow Petitioner to withdraw his guilty plea to Count V. In reaching our decision, we considered the following propositions of error and determined this result to be required under the law and the evidence:

- I. The trial court erred by entering judgments and sentences which violate the principles of double jeopardy.
- II. The evidence was insufficient to support the charges of knowingly concealing stolen property; accordingly, there existed no factual basis for the blind plea to these charges.
- III. The guilty plea form reflects that Petitioner was misinformed about the sentences on the charges of knowingly concealing stolen property.
- IV. The trial judge failed to properly review the case on the motion to withdraw the plea.
- V. Petitioner was deprived of effective assistance of counsel.
- VI. The sentences were excessive.

### **DECISION**

As to Petitioner's first proposition, we find that the two robberies, while occurring in close proximity to one another, were separate offenses and do not violate either the constitutional prohibition against double jeopardy or the statutory prohibition against double punishment. *See Davis v. State*, 916 P.2d 251, 261 (Okl.Cr.1996); *Hale v. State*, 888 P.2d 1027, 1028 (Okl.Cr.1995). On the record before this Court, however, we find that his two convictions for

concealing stolen property are violative of the prohibition against double jeopardy. See *Antrobus v. State*, 900 P.2d 1003, 1004-05 (Okl.Cr.1995). Accordingly, his conviction on Count IV is reversed with instructions to dismiss.

With regard to Proposition II, we find that Petitioner has not provided an adequate record upon which this Court can review his claims. See *Hill v. State*, 898 P.2d 155, 160 (Okl.Cr.1995).

Petitioner's third proposition requires that Petitioner be allowed to withdraw his guilty plea to concealing stolen property in Count V as he was misinformed to his detriment about the range of punishment for this crime. See 21 O.S.2001, § 421; 21 O.S.2001, § 51.1(2). Petitioner was properly advised of the range of punishment for the crime of conspiracy in Count I.

Petitioner's argument in Proposition IV warrants no relief as the record reflects that the judge ruled upon the arguments raised in the motion.

Although counsel could have done more in her representation of Petitioner, prejudice caused to Petitioner by counsel's failure to realize the double jeopardy argument as well as the failure to advise him of the proper sentencing ranges has been remedied by this Court's decision to dismiss Count IV and to allow Petitioner to withdraw his plea to Count V. His argument regarding counsel's other alleged deficiencies does not support the conclusion

that he suffered any resulting prejudice. Accordingly, relief is not required on error alleged in Proposition V. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

We find in Proposition VI that Petitioner's sentence was not excessive. *See Rea v. State*, 34 P.3d 148, 149 (Okl.Cr.2001).

Finally, in Proposition VII we find that the record in this case reveals no error which, singly or in combination, would justify either modification or reversal. Any irregularities or errors were harmless beyond a reasonable doubt. *Black v. State*, 21 P.3d 1047, 1078 (Okl.Cr.2001).

The decision of the trial court denying Petitioner's request to withdraw his pleas to Counts I, II, III and VI is **AFFIRMED**. As to these counts the Petition for Writ of Certiorari is **DENIED**. The denial of Petitioner's Motion to Withdraw his plea in Count V is **REVERSED** and as to this count the Petition for Writ of Certiorari is **GRANTED**. Petitioner's conviction on Count IV is **REVERSED** and **REMANDED** with instructions to **DISMISS**.

**APPEARANCES AT PLEA HEARING**

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**OPINION BY: STRUBHAR, J.**

JOHNSON, P.J.: CONCUR  
LILE, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR IN PART/DISSENT IN PART  
CHAPEL, J.: CONCUR

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**LUMPKIN, JUDGE: CONCUR IN PART/ DISSENT IN PART:**

I concur in the affirmance of Counts I, II, III and VI. However, I dissent to the reversal of the conviction in Count IV. Both counts of Knowingly Concealing Stolen Property, Counts IV and V, were based on separate and distinct facts and were therefore permissible. In the Plea of Guilty/Summary of Facts form, Petitioner acknowledged the truth of the allegations set forth in the Amended Information. In *Antrobus v. State*, 900 P.2d 1003, 1005 (Okl.Cr.1995), this Court held that when a defendant has knowledge that stolen property came from several sources, multiple charges for concealing stolen property is not a violation of double jeopardy. Therefore, the separate charges for concealing stolen property in this case were proper and should be affirmed.

Further, in regards to Count V, I dissent to the reversal of the denial of Petitioner's Motion to Withdraw. Despite the incorrect information on the plea form regarding the range of punishment, Petitioner is not entitled to withdraw his guilty plea. Petitioner has not suffered any harm by the error as the term of imprisonment handed down by the judge for Count V was within the statutory range of punishment. Further, the sentence in Count V was to be served concurrently with the sentences in Counts I and II. And finally, Petitioner admitted his responsibility for the crime alleged in Count V. Under these circumstances, any error was harmless and did not constitute reversible error.

*See Hunter v. State*, 825 P.2d 1353, 1357 (Okl.Cr.1992), (Lumpkin, J., concur in part/dissent in part).