

JUL - 2 2003

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

RONALD CHARLES SKINNER,)
) NOT FOR PUBLICATION
 Petitioner,)
 v.) Case No. C 2002-1460
)
THE STATE OF OKLAHOMA,)
)
 Respondent.)

ORDER GRANTING WRIT OF CERTIORARI ON
COUNTS 1-3; ORDER DENYING CERTIORARI ON COUNT 4

JOHNSON, PRESIDING JUDGE:

Petitioner Skinner pled guilty to Manufacturing CDS (methamphetamine), in violation of 63 O.S.2001, § 2-401(G)(Count 1); Possession of Anhydrous Ammonia in Unauthorized Container, in violation of 63 O.S.2001, § 2-401(G)(Count 2); Conspiracy to Manufacture CDS, in violation of 63 O.S.2001, § 2-408 (Count 3); and Possession of Controlled Substance, in violation of 63 O.S.2001, § 2-402 (Count 4), in Stephens County District Court, Case No. 2002-79. The Honorable George Lindley, District Judge, accepted the pleas and ordered Petitioner to serve twenty-five (25) years imprisonment on Counts 1-3, and imposed Fifty Thousand Dollar (\$50,000.00) fines on each of those Counts; he sentenced Petitioner to ten (10) years imprisonment on Count 4 and imposed a One Thousand Dollar (\$1,000.00) fine. Judgment and Sentence was entered on October 10, 2002, and Judge Lindley ordered the sentences to run concurrently.

Petitioner moved to withdraw his guilty pleas on October 17, 2002. Hearing on the application was held on November 18, 2002, and Judge Lindley

denied the application to withdraw guilty pleas. Thereafter, Petitioner filed this Petition for Writ of Certiorari.

Petitioner raises four propositions of error:

1. The pleas of guilty to Counts 1, 2, and 3 were not knowingly and voluntarily entered because the Petitioner was not advised of the correct ranges of punishment;
2. The \$50,000 fines imposed on each of three counts must be vacated because they are not authorized by law and were imposed by the Court on the misunderstanding that such fines were required by law;
3. The trial court erred in accepting Mr. Skinner's guilty plea to Counts 3 (Conspiracy) and 4 (Possession) because there was no factual support for the crimes other than Mr. Skinner's statements, and Mr. Skinner specifically denied the he had conspired with the only person alleged in the information and denied that he was aware of the drugs found in and around the house; and,
4. Mr. Skinner's simultaneous convictions for Count 1, manufacturing methamphetamine, and for Count 2, possessing anhydrous ammonia in an unauthorized container violate double jeopardy principles. Possessing anhydrous ammonia in an unauthorized container is simply prima facie evidence of the intent to manufacture a controlled dangerous substance.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs¹, this Court finds that the issues raised in Propositions One and Two have merit and warrants the Petition for Writ of Certiorari be granted in part on those counts for the reasons set forth below.

¹ We directed the State of Oklahoma to file a response to the propositions raised. Respondent's brief was filed on June 2, 2003.

The State concedes Petitioner was not properly advised on the correct range of punishment on Counts 2 and 3. Further, on Counts 1, 2 and 3, he was told he was subject to fines in excess of that allowed by law. A guilty plea cannot be knowingly entered where the defendant is unaware of, and is misadvised as to, the proper range of punishment. *Hunter v. State*, 1992 OK CR 1, ¶ 4, 825 P.2d 1353, 1355. The error in the misstatement of punishment is fundamental. *Id.* We therefore reverse and remand Counts 2 and 3 to the district court with instructions to allow Petitioner to withdraw his guilty pleas on those Counts. Petitioner was correctly advised on the range of punishment on Count 1. However, the fifty thousand dollar (\$50,000.00) fine imposed is in excess of that allowed by law. See 21 O.S.2001, § 64; 21 O.S.2001, § 51.1; *Gaines v. State*, 1977 OK CR 259, ¶¶ 15-17, 568 P.2d 1290, 1294 (punishment may not be assessed by combining statutes; no fine in § 51.1). Accordingly, the fine imposed on Count 1 is hereby modified to ten thousand dollars (\$10,000.00).

Because we grant relief on Propositions One and Two, the issue raised in Proposition Four is moot. In Proposition Three, we find the record discloses an adequate factual basis for Count 4. *Hagar v. State*, 1999 OK CR 35, ¶ 4, 990 P.2d 894, 896-897. Because Count 3 is reversed and remanded, we need not address the adequacy of the factual basis for that count.

DECISION

The Petition for Writ of Certiorari is hereby **GRANTED IN PART** on Counts 1, 2 and 3; Counts 2 and 3 are **REVERSED AND REMANDED** to the district Court with instructions to allow Petitioner to withdraw his guilty

pleas on those counts; the Judgment and Sentence imposed in Court 1 is **AFFIRMED**, however, the fine in Count 1 is **MODIFIED** to a Ten Thousand Dollar (\$10,000.00) fine; the Petition for Writ of Certiorari on Count 4 is **DENIED** and the Judgment and Sentence imposed on Count 4 is **AFFIRMED**.

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OPINION BY: JOHNSON, P.J.

LILE, V.P.J. : CONCUR
LUMPKIN, J.: CONCUR
CHAPEL, J.: CONCUR
STRUBHAR, J.: CONCUR

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