

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 13 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLES EARL SMITH, JR.,)

NOT FOR PUBLICATION

)
)
Appellant,)

v.)

Case No. F 2000-599

)
)
THE STATE OF OKLAHOMA,)

)
)
Appellee.)

SUMMARY OPINION

JOHNSON, VICE PRESIDING JUDGE:

Appellant, Charles Earl Smith, Jr., was charged in Stephens County District Court, Case No. CF 98-249, with Omitting to Provide for Minor Child, in violation of 21 O.S.1991, § 852(A). Appellant was found guilty after a non-jury trial held before the Honorable George W. Lindley, District Judge, on May 8, 2000. Judgment and Sentence was imposed on April 19, 2000, and Judge Lindley sentenced Appellant to three years imprisonment, assessed a \$1,000.00 fine, and ordered Appellant to pay \$10,247.00 in restitution. From the Judgment and Sentence imposed, Appellant filed this appeal.

In his sole proposition of error, Appellant argues the imposition of \$10,247.00 in restitution served to deny Mr. Smith of due process of law and accordingly requires modification.

After thorough consideration of the proposition raised and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that Appellant's conviction and sentence

should be affirmed, but the order of restitution modified. The State concedes the restitution ordered by the trial court was erroneous and warrants slight modification.

We believe the trial court acted well within its power in imposing restitution. The record clearly shows the total amount due was \$10,973.88. Appellant made payments of \$419.76, 209.88, 100.00, and an unknown amount. In determining the applicable amount of restitution, the unknown amount paid in February 2000 must be taken into consideration. Accordingly, we find the restitution order should be modified to \$10,035.25. *See Honeycutt v. State*, 1992 OK CR 36, ¶¶ 31-34, 834 P.2d 993, 1000.

DECISION

The Judgment and Sentence is hereby **AFFIRMED**, but the order of restitution is hereby **MODIFIED** to \$10,035.25.

APPEARANCES AT TRIAL

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OPINION BY: JOHNSON, V.P.J.

LUMPKIN, P.J.: CONCURS

CHAPEL, J.: CONCURS

STRUBHAR, J.: CONCURS

LILE, J.: CONCURS

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