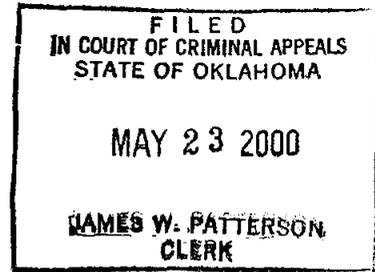


**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

RODNEY MARK WATSON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. F-99-477



**SUMMARY OPINION**

**LILE, JUDGE:**

Appellant, Rodney Mark Watson, was convicted at a judge trial in the District Court of Cleveland County of Count I - Unlawful Possession of Marijuana with Intent to Distribute, 63 O.S.1991, § 2-401(B)(2); Count II - Unlawful Possession of Psilocyn, 63 O.S.1991, § 2-401(B)(1); Count III - Unlawful Possession of Methamphetamine, 63 O.S.1991, § 2-401(B)(1); Count IV - Maintaining a Vehicle to Keep or Sell a Controlled Drug, 63 O.S.1991, § 2-404(A)(6); Count V - Failure to Display a Tax Stamp, 63 O.S.1991, § 2-450.8; and Count VI - Unlawful Possession of Paraphernalia, 63 O.S.1991, § 2-405(B), all After Former Conviction of a Felony in case no. CF-97-1473. The Honorable Tom A. Lucas, District Judge, sentenced Appellant to life imprisonment on Count 1; ten (10) years each on Counts II and III and one (1) year each on Counts IV, V and VI. All sentences were concurrent. From these judgments and sentences, Appellant has perfected this appeal.

Appellant raises the following propositions of error in support of his appeal:

- I. Appellant's multiple convictions arising out of one course of conduct violates his right to be free from double jeopardy and double punishment.
- II. The trial court's denial of Appellant's Motion to Remand for Preliminary Hearing constituted reversible error.
- III. Appellant was denied his right to delay his formal sentencing two days after the verdict was rendered, over objection of trial counsel.
- IV. The sentence imposed against Mr. Watson is excessive and should be modified.

After a thorough consideration of the propositions of error and the entire record before us, including the original record, transcripts and briefs of the parties, we find merit to Proposition I, requiring that Count II be remanded with instructions to Dismiss.

Under the ruling in *Watkins v. State*, 1992 OK CR 34, 855 P.2d 141, we find that Count II and Count III may not both be prosecuted. The crime charged is possession of a controlled dangerous substance which is the required element and possession of methamphetamine and Psilocyn at the same time and by the same act is one crime. Count II is Reversed and Remanded with instructions to Dismiss.<sup>1</sup>

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<sup>1</sup> This result is required by our previous decisions although I believe the reasoning in *Watkins* to be defective. Appellant knowingly and intentionally made the decision to possess two different substances and each should be treated as a separate offense.

With regard to Proposition II, we find that Appellant waived his preliminary hearing by entering a plea of not guilty at arraignment. *Berry v. State*, 1992 OK CR 41, 834 P.2d 1002; *Hambrick v. State*, 1975 OK CR 86, 535 P.2d 703, 705; *Blake v. State*, 1962 OK CR 114, 375 P.2d 270; *Muldrow v. State*, 185 P. 332.

With regard to Proposition III, we find that Appellant waived the right for a two (2) day delay before sentencing. *Culpepper v. State*, 1973 OK CR 89, ¶14, 507 P.2d 561, 564; *Holsonbake v. State*, 1966 OK CR 92, ¶7, 416 P.2d 178, 180; *Hudson v. State*, 165 P.2d 774, 779.

With regard to Proposition IV, we find that the sentence is not excessive. *Maxwell v. State*, 1989 OK CR 22, 775 P.2d 818.

### **DECISION**

Count II is **REVERSED** and **REMANDED** with Instructions to Dismiss. The Judgment and Sentences as to all other counts are **AFFIRMED**.

**ATTORNEYS AT TRIAL**

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**OPINION BY: LILE, J.**

**STRUBHAR, P.J.: CONCURS**  
**LUMPKIN, V.P.J.: CONCURS IN RESULTS**  
**JOHNSON, J.: CONCURS**  
**CHAPEL, J.: CONCURS IN PART/DISSENTS IN PART**

**RE**