

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

DUSTIN LEE WILKERSON, )  
 )  
 Petitioner, )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION  
Case No. C-2006-863

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

MAY 17 2007

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION DENYING CERTIORARI**

**CHAPEL, JUDGE:**

On April 17, 2006, Wilkerson entered a blind plea to First Degree Manslaughter in violation of 21 O.S.2001, § 711 in the Tulsa County District Court Case No. CF-2005-106. On June 23, 2006, the trial court accepted Wilkerson's plea and sentenced him to life imprisonment, suspending all but the first twenty (20) years. The trial court also ordered him to pay \$10,000.00 in restitution. On July 3, 2006, Wilkerson filed a Motion to Withdraw his Plea, which was denied by the trial court at a hearing on August 1, 2006. Wilkerson then timely filed his Notice of Intent to Appeal and Petition for Writ of Certiorari in this Court.

Wilkerson raises the following propositions of error:

- I. Mr. Wilkerson's sentence was the result of bias, passion, and prejudice from a Court, so inflamed by improper evidence and argument, that it stated an inability to exercise mercy and imposed an inflated sentence that must be modified or reversed in the interest of justice.
- II. Mr. Wilkerson must be relieved of the \$10,000.00 fine waived in both the oral pronouncement of sentence and original written judgment and sentence.

- III. The judgment and sentence must be corrected by an order *nunc pro tunc* to reflect the date the judgment and sentence was originally imposed.

After thorough consideration of the entire appellate record, including the original record, transcripts, and briefs and exhibits of the parties, we find in Proposition I that Wilkerson's plea was knowingly and voluntarily entered and his sentence was not excessive.<sup>1</sup> We find in Proposition II that the trial court correctly struck its order of \$10,000.00 in restitution from the Judgment and Sentence but improperly imposed a \$10,000.00 fine in place of the restitution.<sup>2</sup> We find in Proposition III that the Judgment and Sentence must be corrected to reflect the date it was originally imposed on June 23, 2006.<sup>3</sup>

### Decision

Petitioner's Writ of Certiorari is **DENIED**. However, the Judgment and Sentence should be **MODIFIED** by vacating the \$10,000.00 fine. The trial court is also **ORDERED** to enter an order *nunc pro tunc* reflecting that Wilkerson's Judgment and Sentence was entered on June 23, 2006. 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.

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<sup>1</sup> *Maxwell v. State*, 141 P.3d 564, 567 fn 7 (Okl.Cr. 2006)(review on certiorari limited to "whether (1) the plea was knowing and voluntary, (2) the Information was sufficient to confer jurisdiction, and (3) the sentence was legal.") Wilkerson did not challenge the voluntariness of his plea. Regardless, we find that Wilkerson's plea was knowingly and voluntarily entered. We also find that Wilkerson's sentence was neither "shocking to the conscience," or the product of any improper evidence.

<sup>2</sup> Here, the trial court properly eliminated the restitution order because there was no evidence to support it. 22 O.S.2001, § 991f(c)(3)(c)(trial court can amend or alter restitution amount provided it states its reasons for doing so on the record). However, the trial court illegally imposed the fine. *LeMay v. Rahal*, 917 P.2d 18, 23 (Okl.Cr.1996)( trial court cannot *sua sponte* modify sentence after it has been pronounced in open court). Moreover, the trial court could only reduce Wilkerson's sentence pursuant to 22 O.S.2001, § 982a not change or increase it.

<sup>3</sup> *LeMay*, 917 P.2d at 23. The original date of the oral pronouncement in court is the date a defendant is sentenced and any subsequent modifications date back to the original sentencing date.

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**OPINION BY: CHAPEL, J.**

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

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