

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

TOMMY LEE WILLIAMS, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

Case No. C 2006-497

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

**FEB 26 2007**

**MICHAEL S. RICHIE**  
CLERK

**SUMMARY OPINION GRANTING CERTIORARI  
AND MODIFYING SENTENCE**

**LEWIS, JUDGE:**

Tommy Williams entered a plea of *nolo contendere* to the crime of Child Abuse, 10 O.S.2001, § 7115, in Delaware County District Court Case No. CF-2005-221, before the Honorable Robert G. Haney, District Judge. On April 5, 2006, Williams was sentenced to life imprisonment with all but thirty (30) years suspended, with the provision that his probation be supervised for life.

Williams, through counsel, filed a motion to withdraw plea claiming that his sentence was excessive; that the trial court considered evidence of unadjudicated crimes in determining the sentence; and that the court improperly ordered Petitioner to register as a violent offender pursuant to the Mary Rippy violent Crime Offenders Registration Act.

The trial court denied his motion, and Petitioner filed the instant appeal, which was at issue on October 12, 2006. Petitioner raises the following propositions on appeal:

1. The trial judge abused his discretion by imposing a sentence which is shockingly excessive.
2. The trial judge failed to determine the competency of Mr. Williams.
3. The trial judge erred by ordering Mr. Williams to be under supervised probation for the rest of his life.
4. The trial court failed to inform Petitioner of the sentence ranges for the charged crime, thus, there exists no clear record that Mr. Williams was properly informed about the 85-percent rule in this case.
5. The cumulative effect of the errors in this case deprived Mr. Williams of a fair hearing and due process of law.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, motions and Petitioner's brief, we grant *Certiorari* and modify Petitioner's sentence based on a cumulative review of propositions one and three.

In proposition one, we find that Petitioner was given a sentence which shocks the conscience of this Court. In proposition three, we find that the trial court sentenced Petitioner under the "Mary Rippy Violent Crime Offenders Registration Act." 57 O.S.Supp.2004, § 591, *et seq.* Section 593 of the act enumerates crimes which fall under the act. Child abuse, 10 O.S.2001, § 7115, is not enumerated in the act; therefore, Petitioner is not subject to the provisions of the act.<sup>1</sup>

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<sup>1</sup> The statute uses specific language and enumerates the applicable crimes as those found in 21 O.S., § 701.7; 21 O.S. § 701.8; 21 O.S., § 711; 21 O.S., §§ 652 and 653; and 21 O.S, § 1767.1.

In deciding proposition two, we find that this issue was not raised at the trial court, thus we review for plain error only. *Fields v. State*, 1997 OK CR 53, 946 P.2d 266, 269, Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2005). Petitioner has not met his burden in showing that he was incompetent or that the guilty plea was entered through inadvertence, ignorance, influence, or without deliberation. *Estell v. State*, 1988 OK CR 287, 766 P.2d 1380, 1383. In proposition four, we find that Petitioner did not raise this issue at the trial court, thus we can review for plain error only. While it is true that the trial court did not advise Petitioner of the application of the 85% rule to his case, there is no indication that Petitioner was unaware of this rule. Counsel actually argued the applicability of the 85% rule in this case at sentencing while asking for a sentence. Unlike the facts of *Ferguson v. State*, 2006 OK CR 36, 143 P.3d 218, Petitioner has not shown that he was unaware of the 85% rule. There is no plain error here.

In proposition five, we find the determination of error in Petitioner's arguments in propositions one and three cause this Court to apply a cumulative error analysis. From the record it is clear that the trial court abused its discretion in sentencing petitioner, first by giving him an excessive sentence, and second, by giving him terms and condition of a probated term which was not authorized by law. Therefore, we find that modification of Petitioner's sentence is required. That modification is set forth below in our decision.

**DECISION**

We grant *Certiorari* review in this case. We find the trial court abused its discretion in sentencing Petitioner. Therefore, Petitioner's sentence is hereby **MODIFIED** to twenty (20) years. The case is **REMANDED** to the trial court for the entry of orders consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**APPEARANCES AT TRIAL**

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**OPINION BY: LEWIS, J.**

**LUMPKIN, P.J.: Concur in Results**  
**C. JOHNSON, V.P.J.: Concur**  
**CHAPEL, J.: Concur**  
**A. JOHNSON, J.: Concur**

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NO RESPONSE NECESSARY

**LUMPKIN, PRESIDING JUDGE: CONCUR IN RESULT**

I concur in the results reached in this case based on a reading of the record. However, this Court should not enter an order granting certiorari without first giving the State an opportunity to respond. In addition, the petitioner does not raise any issue attacking the application of 57 O.S. Supp. 2004, § 591, *et seq.* to this case and the Court should not raise it *sua sponte*. The petitioner's claim of error is excessive sentence only. And, I agree that under the facts of this case the sentence was excessive. The language regarding the "Mary Rippy Violent Crime Offenders Registration Act" is merely dicta and this Court has consistently stated it does not render advisory opinions, thus, that language should be deleted.