

DEC - 2 1999

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THOMAS BOEHN

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

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) **NOT FOR PUBLICATION**
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Case No. C-99-595

SUMMARY OPINION GRANTING CERTIORARI

LUMPKIN, VICE-PRESIDING JUDGE:

Petitioner pled guilty and was convicted of twenty (20) counts of Obtaining Cash and/or Merchandise by Bogus Checks in violation of 21 O.S.1991, § 1541.2 in Grady County District Court case no. CF-97-176. He was sentenced to a total of twenty (20) years imprisonment on the twenty (20) counts with all but ten (10) years suspended.

Petitioner filed a *pro se* motion to withdraw his plea. The matter was heard on April 6, 1999, and the special judge took the matter under advisement. On April 23, 1999, the special judge entered his order denying Petitioner's motion, finding: Petitioner failed to raise the issue that he was not informed of his legal rights and the nature and consequence of his plea in his Motion to Withdraw Guilty Plea; Petitioner was effectively represented by his attorney; Petitioner failed to present competent evidence that his guilty plea was due to his failure to understand the consequences of his plea or was the result of inadvertence, ignorance, misunderstanding, misapprehension, or lack of deliberation; Petitioner entered his plea knowingly and voluntarily; Petitioner believed he could receive twenty (20) years for all of the offenses; Petitioner understood the maximum range of punishment for each count; and Petitioner

was advised of the consequences of entering a blind plea of guilty. Petitioner now appeals from the trial court's denial of his motion to withdraw guilty plea.

Petitioner raises the following propositions of error in this appeal:

- I. Petitioner's pleas were entered as a result of a misunderstanding of the legal process and the proper range of punishment;
- II. Reversible error occurred when the trial court accepted Petitioner's pleas without informing him of the elements of each offense charged; and
- III. The sentence imposed was excessive.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts, and briefs of the parties, we have determined Petitioner's first proposition, insofar as it relates to Petitioner being misinformed regarding the applicable range of punishment, has merit.

Pursuant to *King v. State*, 553 P.2d 529, 535 (Okla. Cr. 1976), the trial court is required to "inform the defendant of the range of punishment provided by law for the offense of which defendant is charged, including the minimum and maximum punishment." This was clearly not done here. The record before us reflects Petitioner was misinformed regarding the applicable range of sentence at every critical stage of the proceedings, including the plea of guilty/summary of facts form, the sentencing hearing, motion to withdraw guilty plea hearing, order denying motion to withdraw guilty plea, and Petitioner's brief in support of his application for Writ of Certiorari.

Beginning with the Information filed in this case, there was a misunderstanding as to what statute was applicable to each charge. The Amended Information, filed on October 21, 1997, fails to properly set out each offense as a separate count. Instead, below the style of the case, the Amended

Information states: "Information for: Obtaining Cash and/or Merchandise by Bogus Check 21 O.S. 1541.2 (20 Counts)". However, all of the alleged offenses did not fall under Section 1541.2 and all of the alleged offenses were not committed "feloniously," as alleged in the Amended Information. Had each alleged offense been set out properly as a separate count with the correct statutory reference for that count stated within the charging portion thereof, the misunderstanding could have been alleviated.

Petitioner was never fully informed: two counts were punishable by imprisonment for up to ten years and/or a five thousand dollar fine; fourteen counts were punishable by incarceration in the county jail for up to one year and/or a five thousand dollar fine; and four counts were only misdemeanors, punishable by imprisonment in the county jail for not more than one year and/or a fine not to exceed one thousand dollars. Furthermore, Petitioner was never informed he was being charged with a violation of 21 O.S.1991, § 1541.1.

In addition, the Judgment and Sentence is invalid on its face. The trial court simply batched all twenty counts into a single judgment and sentence as if by reference. Each count is not addressed individually with the punishment set out for each specific count. Therefore, on its very face, it would appear a void sentence has been imposed. None of the counts carries the possibility of twenty years in prison, and the trial court did not state whether the counts would run consecutively or concurrently. The failure to so state means the counts would run consecutively by operation of law. *See Beck v. State*, 478 P.2d 1011, 1012 (Okl.Cr.1970) (finding four separate judgments, which did not provide for concurrent execution, must be served consecutively).

The method of pleading and the method of entering the judgment and sentence leave much to be desired in the way of discerning what was done in this case. A foundational requirement of a free and voluntary plea, especially a blind plea, is that the defendant understood the possible punishment which could be assessed upon the trial court's acceptance of the plea. It is apparent none of the participants in this case understood the range of punishment available for each individual count alleged by the State. Therefore, Petitioner's guilty pleas simply cannot stand.

DECISION

The Petition for Certiorari is hereby granted. This matter is hereby remanded to the District Court with instructions to allow Petitioner to withdraw his guilty plea.

**AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY
THE HONORABLE TIMOTHY A. BRAUER, SPECIAL JUDGE**

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OPINION BY: LUMPKIN, V.P.J.
STRUBHAR, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
CHAPEL, P.J.: CONCUR
LILE, J.: CONCUR

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