

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KENNETH CLARK KNOX,

Appellant,

v.

STATE OF OKLAHOMA

Appellee.

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) **NOT FOR PUBLICATION**
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Case No. F-2009-149

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) FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 16 2010

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant Kenneth Clark Knox was tried by jury and convicted of Sexual Battery, After Former Conviction of Two or More Felonies (21 O.S.Supp.2006, § 1123(B)), Case No. CF-2007-5755, in the District Court of Tulsa County. The jury recommended as punishment four (4) years imprisonment and the trial court sentenced accordingly, and ordering a three (3) year term of post-imprisonment supervision. It is from this judgment and sentence that Appellant appeals.

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

- I. The State's evidence was insufficient to establish a sexual battery and Appellant's conviction must be reversed with instructions to dismiss.
- II. Because Title 21, Section 1123(E) became effective only after the conduct alleged by the State, the three year post-imprisonment supervision imposed by the court is void and must be vacated.
- III. Alternatively, the written judgment and sentence must be corrected to comply with the court's oral pronouncement of sentence by an Order *Nunc Pro Tunc*.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that neither reversal nor modification of sentence is warranted under the law and the evidence.

In Proposition I, when considered in the light most favorable to the State, the evidence is sufficient to establish beyond a reasonable doubt that Appellant committed the offense of sexual battery. *See Rutan v. State*, 2009 OK CR 3, ¶ 49, 202 P.3d 839, 849, citing *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559 and *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204 (standard of review for challenges to sufficiency of the evidence). While there was conflicting testimony, there was sufficient competent evidence to support the finding that Appellant intentionally touched the victim in a lewd and lascivious manner.

In Propositions II and III, we find the trial court exceeded its authority in sentencing Appellant to three (3) years post-incarceration supervision. Finding no express indication that the Legislature intended the 2007 amendment to Title 21 § 1123, effective November 1, 2007 and providing for post-incarceration supervision, to be applied retroactively, Appellant was entitled only to an application of the law which was in effect at the time he committed the crime. *See Cox v. State*, 2006 OK CR 51, ¶ 14, 152 P.3d 244, 250; *Williams v. State*, 2002 OK CR 9, ¶ 4, 59 P.3d 518, 519; *State v. Watkins*, 1992 OK CR 50, ¶¶ 5-6, 837 P.2d 477, 478. *See also* 22 O.S.Supp.2008, § 991a(A)(1)(f)

(effective February 28, 2008, specifically granting trial court authority to sentence defendants to post-incarceration supervision for violations of 21 O.S. § 1123). Therefore, the three (3) years of post-incarceration supervision levied in this case is vacated and the case is remanded to the District Court for an Order *Nunc Pro Tunc* correcting the Judgment and Sentence to reflect a sentence of four (4) years imprisonment for sexual battery, after former conviction of two or more felonies.

DECISION

The Judgment is **AFFIRMED**. The three (3) years of post-incarceration supervision is vacated and the case is **REMANDED** to the District Court for an Order *Nunc Pro Tunc* reflecting that the sentence is four (4) years imprisonment, after former conviction of two or more felonies. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM C. KELLOUGH, DISTRICT JUDGE

APPEARANCES AT TRIAL

STEVE VINCENT
7122 S. SHERIDAN, STE. 2-372
TULSA, OK
COUNSEL FOR APPELLANT

TIM HARRIS
DISTRICT ATTORNEY
ERIK GRAYLESS
JACK THORP
ASSISTANT DISTRICT ATTORNEYS
500 S. DENVER
TULSA, OK
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

KIMBERLY D. HEINZE
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
JENNIFER B. WELCH
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

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

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