IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 19 1999

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOM

CATE OF OKLAHONJAMÉS W. PATTE<u>RSON</u>

GLERK

TIMI DEAN LITTLETON,)
) NOT FOR PUBLICATION
Appellant,)
v.) Case No. C-99-528
)
STATE OF OKLAHOMA,)
)
Appellee.)

SUMMARY OPINION DENYING CERTIORARI

CHAPEL, JUDGE:

Timi Dean Littleton pled guilty to Count I, Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor in violation of 47 O.S.1991, § 11-902-A; Count II, Attempting to Elude Police Officer in violation of 22 O.S.1991, § 540-A; Count III, Unlawful Possession of Paraphernalia in violation of 63 O.S.1991, § 2-405(B); Count IV, Carrying a Concealed Weapon in violation of 21 O.S.Supp.1995, § 1289.8; Count V, Resisting an Officer in violation of 21 O.S.1991, § 268, in the District Court of Seminole County, Case No. CM-98-189. Littleton also pled guilty to the misdemeanor offense of Driving Under Suspension in violation of 47 O.S.1991, § 6-303, in Case No. TR-98-787. On March 23, 1999, Judge Lee G. Stilwell sentenced Littleton in CM-98-189 to one (1) year imprisonment in the county jail on each of Counts I and II, six (6) months imprisonment in the county jail on each of Counts III, IV, and V, a \$500 fine on Count I, and a \$100 fine on Count II. In TR-98-787 Littleton

was sentenced to ninety (90) days imprisonment in county jail. Littleton also pled guilty to a felony charge of Escape in CF-98-166A.

On March 15, 1999, Littleton filed a *pro se* motion to withdraw his guilty pleas. After a March 23 hearing, Judge Stilwell allowed Littleton to withdraw his plea of guilty to the felony escape charge, but denied his request to withdraw his guilty pleas on the misdemeanor charges, and imposed the sentences above. Counsel filed an additional application to withdraw the misdemeanor pleas on March 26. This was denied after an April 9 hearing. Littleton filed his Petition for Writ of Certiorari on July 2, 1999.

Littleton raises two propositions in support of his petition:

- I. Littleton should be allowed to withdraw his pleas because they were not knowingly, intelligently and voluntarily entered; and
- II. The trial court's sentence is void, because as charged and proven it exceeds the maximum sentence proscribed [sic] by statute, therefore it must be set aside; or in the alternative modified.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we affirm the trial court's denial of Littleton's application to withdraw his guilty plea. We find in Proposition I that Littleton's pleas were knowingly, intelligently and voluntarily entered. We specifically find (1) Littleton's failure to fulfill the terms of his negotiated plea ensured that his plea bargain was dissolved, (2) he

¹ King v. State, 553 P.2d 529 (Okl.Cr.1976). Subpropositions B, C and D of Proposition I raise claims not raised in either Motion to Withdraw or in his Petition for Certiorari. These claims

appeared at the March 23, 1999, sentencing hearing to be sentenced on a blind plea, and (3) the trial court did not err in sentencing Littleton on his misdemeanor pleas. We find in Proposition II that Littleton's sentence in Case No. CM-98-189, Count III, must be modified to thirty (30) days imprisonment in the county jail.² Littleton's Motion to Supplement Appeal Record and Brief in Support is **DENIED**.

Decision

The Petition for Writ of Certiorari is **DENIED**. The sentence in Case No CM-98-189, Count III, is **MODIFIED** to thirty (30) days imprisonment in the county jail.

APPEARANCES AT TRIAL

APPEARANCES ON APPEAL

BRADLEY CARTER
P.O. BOX 1663
SEMINOLE, OKLAHOMA 74818-1663
ATTORNEY FOR DEFENDANT

KIMBERLY D. HEINZE APPELLATE DEFENSE COUNSEL 1623 CROSS CENTER DRIVE NORMAN, OK 73019 ATTORNEY FOR PETITIONER

PAUL SMITH ASSISTANT DISTRICT ATTORNEY SEMINOLE COUNTY WEWOKA, OKLAHOMA 74884 ATTORNEY FOR STATE

NO RESPONSE REQUIRED

OPINION BY: CHAPEL, J.

STRUBHAR, P.J.:

CONCUR

LUMPKIN, V.P.J.:

CONCUR

JOHNSON, J.:

CONCUR

LILE, J.:

CONCUR

are not properly before this Court, and we do not consider them. Rules 4.2(B), 4.3(C), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (1999).

² 21 O.S.Supp.1996, § 1276. Although this proposition is not properly raised under Rule 4.3(C), we modify the illegal sentence in the interests of justice.