IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RAYSHUN CARLIE MULLINS,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. C-2006-1154
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

SUMMARY OPINION GRANTING CERTIORARI IN PART

A. JOHNSON, JUDGE:

Petitioner Rayshun Carlie Mullins entered blind pleas of guilty in the District Court of Oklahoma County, Case No. CF-2004-4411, to various counts of rape, sodomy, robbery, burglary, and assault with intent to rape between December 15, 2003, and July 26, 2004. Specifically, Mullins entered guilty pleas to six counts of First Degree Rape in violation of 21 O.S.2001, § 1111 (Counts 2, 4, 9, 12, 18, and 27), three counts of Forcible Oral Sodomy in violation of 21 O.S.2001, § 886 (Counts 3, 19, and 29), six counts of First Degree Robbery in violation of 21 O.S.2001, § 791 (Counts 7, 13, 16, 20, 24, and 31), five counts of First Degree Burglary in violation of 21 O.S.2001, § 1431 (Counts 8, 10, 14, 15, and 25), and one count of Assault with Intent to Commit Rape in violation of 21 O.S.2001, § 681(Count 22).[1]

The Honorable Twyla Mason Gray accepted Mullins' pleas and sentenced him to fifty years imprisonment for Counts 2, 7, 9, 13, and 18; twenty years

[1] The State dismissed Counts 1, 5, 6, 11, 17, 21, 23, 26, 28, and 30. The record suggests this was done under the terms of a plea agreement although Mullins' petition and the State's response state that the pleas were entered as "blind pleas" (Pet. Br. at 2; Resp.Br. at 1).

imprisonment for Counts 3, 8, 10, 14, 15, 19, 25, and 29; seventy years imprisonment for Counts 4, 12, 20, 24, 27, and 31; thirty years imprisonment for Count 16; and five years imprisonment for Count 22. Counts 2, 3, 4, and 7 were ordered to run concurrently. Counts 12 and 13 were also ordered to run concurrently as were Counts 18, 19, and 20, and Counts 27, 29, and 31. All remaining counts were ordered to run consecutively for a total term of imprisonment of 535 years.

Mullins filed a timely motion to withdraw his guilty pleas. The district court held the prescribed hearing and denied the motion. Mullins appeals the district court's order and asks this Court to issue a Writ of Certiorari allowing him to withdraw his pleas and proceed to trial.

Among his several claims, Mullins contends his plea was not knowing and voluntary because the trial court did not advise him that he would have to serve 85% of his sentences for Counts 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 24, 25, 27, 29, and 31 before becoming eligible for parole, as required for these types of crimes by 21 O.S.Supp.2003 § 13.1.[2] The State does not dispute that Mullins was not advised by the trial court of the statutory 85% limit on parole eligibility for these offenses but argues only that Mullins waived the claim by not raising it in the district court in his motion to withdraw his pleas.

[2] Title 21 O.S.2001, § 13.1 requires that persons convicted of certain enumerated offenses (e.g., first-degree rape, first-degree robbery, first-degree burglary, and forcible sodomy) must serve at least 85% of their sentence before becoming eligible for parole.

In *Pickens v. State*, 2007 OK CR 18, ¶ 2, 158 P.3d 482, 483, a case where a defendant similarly failed to raise his 85% claim in the district court, this Court held that a "trial court's failure to advise [a defendant] of the 85% Rule render[s] his plea involuntary" and remanded the case to the district court. There is no dispute that Mullins was never advised by the trial court that all but one of the crimes to which he pled guilty were subject to the 85% limit on parole eligibility. In accordance with *Pickens*, therefore, we must find that Mullins be allowed to withdraw his pleas to the 85% offenses to which he pled guilty (i.e., Counts 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 24, 25, 27, 29, and 31).[3]

Mullins also claims that counsel was ineffective in representing him in the plea, sentencing, and plea withdrawal proceedings in the district court. We find no merit to these claims. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Medlock v. State*, 1994 OK CR 65, ¶ 37, 887 P.2d 1333, 1345. We conclude, therefore, that Mullins' plea to Count 22 (assault with intent to commit rape), the single non-85% crime to which he pled guilty, remains valid. Additionally, because we grant relief on

[3] We note there is nothing in the record showing whether Mullins was ever advised by his attorney of the 85% limit on parole eligibility. Presumably, if Mullins had raised the 85% issue in his motion to withdraw his pleas, the district court could have inquired as to whether Mullins had been advised of the parole eligibility limit by his attorney. Because Mullins was represented by experienced counsel, the likelihood is high that he was so advised and such advisement could have rendered any lack of advisement by the district court harmless. Nevertheless, in this instance, Mullins did not raise the issue below, and under *Pickens* he is able to benefit from that silence. *See Pickens*, 2007 OK CR 18, ¶ 1, 158 P.3d 483-84 (Lumpkin, J., dissenting)(noting that record contained no evidence that Pickens was not advised of the 85% Rule, but that evidence of advisement was merely absent from record and arguing, therefore, that at most, case should be remanded for evidentiary hearing so attorney in question could provide evidence to back up or refute Pickens' lack-of-advisement claim).

Mullins' 85% claim, and necessarily vacate the district court's judgment and sentence with regard to those counts of conviction subject to the 85% limit on parole eligibility, we find that his alternate request that certain sentence-related portions of his judgment and sentence document be corrected is moot. Furthermore, because we grant relief on the 85% claim and leave intact just a single five-year sentence associated with his guilty plea to Count 22, we do not reach Mullins' alternative claim that either his total 535 year sentence or any of his individual 20, 30, 50, or 70 year sentences is excessive.

DECISION

The Application for Writ of Certiorari is **GRANTED IN PART**. The Judgment and Sentence of the District Court is **AFFIRMED** with regard to Count 22. The Judgment and Sentence is **VACATED** with regard to Counts 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 24, 25, 27, 29, and 31. The case is **REMANDED** for further proceedings consistent with this opinion.

Under Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE TWYLA MASON GRAY, DISTRICT JUDGE

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OPINION BY: A. JOHNSON, J.
LUMPKIN, P.J.: Concur in Part/Dissent in Part
C. JOHNSON, V.P.J.: Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgment and sentence in Count 22, but dissent to the vacation of the pleas in the remaining cases. The facts of this case support the fact that *Pickens v. State*, 2007 OK CR 18, 158 P.3d 482, should be overruled. The Petitioner entered a BLIND plea of guilty to twenty-one (21) serious, violent felonies. Anyone with a modicum of common sense, who committed these crimes, would realize they would be going away for a very long time and probation was out of the question. As I stated in my dissent to *Pickens*, "this Court needs to remember a 'blind plea' is just that, a plea of guilty without any guarantee as to what the sentence will be". *Id.* at 484. Trial judges should not be required to explain the parole process or guesstimate when a person might be eligible to be considered for parole. The absurdity of the effects of that kind of policy are poignantly illustrated by the facts of this case, and validate the concerns I expressed in *Ferguson v. State*, 2006 OK CR 36, 143 P.3d 218, 219. This is an example of "playing the system" and we should adopt a more rational policy when dealing with "blind pleas".