

MAY 16 2000

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JAMES W. PATTERSON
CLERK

ERIC DEVELL PETTIT,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

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No. F-99-736

SUMMARY OPINION

STRUBHAR, PRESIDING JUDGE:

Appellant, Eric Devell Pettit, was convicted of Possession of a Controlled Dangerous Substance with Intent to Distribute, After Former Conviction of Two Felonies, in the District Court of Oklahoma County, Case Number CF-98-666, following a jury trial before the Honorable Jerry D. Bass. Following its return of a guilty verdict, the jury recommended that Appellant be sentenced to serve a term of twenty-five years imprisonment and a \$30,000.00 fine. The trial court sentenced Appellant accordingly and suspended the fine.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Appellant's Judgment and we modify his Sentence. In reaching our decision, we considered the following propositions of error and determined this result to be required under the law and the evidence:

- I. Appellant's conviction should be reversed, because the evidence on which it rests was the product of an illegal search under the Fourth

Amendment to the United States Constitution and Article 2 Section 30 of the Oklahoma Constitution.

- II. Appellant's Fourteenth Amendment rights were violated when his jury was permitted to sentence him under both the drug offense enhancement statute and the habitual offender statute.
- III. Appellant was denied the effective assistance of counsel, in violation of the Sixth Amendment to the United States Constitution and corresponding provisions of the Oklahoma Constitution.

DECISION

As to Appellant's first proposition, we agree that the search warrant was general insofar as it did not specify the persons to be searched. However, the warrant was constitutionally sound as to the place to be searched. After the police had searched the residence they had probable cause to arrest Appellant which they certainly would have done. From this valid arrest the drugs secreted on his person would have been inevitably discovered through a search incident to arrest. Accordingly, they were admissible pursuant to the Inevitable Discovery Doctrine. *See Nix v. Williams*, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984).

With regard to Proposition II, we have determined, from the fact that the State charged the Appellant with both former felonies, that it would have opted to enhance under the general provisions of 21 O.S.1991, § 51(B), thereby allowing the jury to consider both prior felony convictions. Since the jury was properly instructed on the term of imprisonment possible under the Habitual

Offender Act it is clear what the jury would have done under proper instruction. They sentenced him to twenty-five years which was five years over the minimum. As Appellant's fine of \$30,000.00 was not authorized under the Habitual Offender Act, we rule that it should be dismissed.

Finally, we find that Appellant was not denied effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).

The Judgment of the trial court is **AFFIRMED**. However, Appellant's Sentence is **MODIFIED** to twenty-five years imprisonment with the fine dismissed.

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OPINION BY: STRUBHAR, P.J.

LUMPKIN, V.P.J.: CONCUR

JOHNSON, J.: CONCUR

CHAPEL, J.: CONCUR

LILE, J.: CONCUR

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