

**IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA**

MITCHELL LAWRENCE ROSE, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
No. F-2000-821

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUL 10 2001  
JAMES W. PATTERSON  
CLERK

**SUMMARY OPINION**

**STRUBHAR, J.:**

Mitchell Lawrence Rose, Appellant, was convicted of one count of Solicitation of First Degree Murder (21 O.S.Supp.1999, §701.16), following a jury trial in the District Court of Cleveland County, Case No. CF-99-1965, District Judge Tom A. Lucas presiding. The trial court imposed sentence in accordance with the jury's recommendation of twenty-seven (27) years imprisonment and ordered Appellant to pay court costs and a \$50.00 Victim's Compensation Assessment. From this judgment and sentence, he appeals.

The following propositions of error were considered:

- I. Because evidence relating to the alleged robbery of a mail truck was irrelevant and highly prejudicial, the trial court erred in allowing the State to admit evidence of it; and
- II. The trial court erred by imposing judgment and sentence without first ordering the preparation of a pre-sentence investigation report.

After thorough consideration of the entire record before us on appeal,

including the original record, transcripts, and briefs of the parties, we affirm the judgment, vacate the sentence and remand this matter for resentencing.

As to Proposition I, we find the trial court erred in admitting evidence of Appellant's alleged robbery of a mail truck. *Burks v. State*, 594 P.2d 771, 772 (1979) *overruled on other grounds by*, *Jones v. State*, 772 P.2d 922 (1989). However, as the evidence of Appellant's guilt was overwhelming, we find this error was harmless beyond a reasonable doubt and did not contribute to the verdict or sentence. *Knighton v. State*, 912 P.2d 878, 889 (Ok1.Cr.1996), *cert. denied*, 519 U.S. 841, 117 S. Ct. 120, 136 L. Ed. 2d 71 (1996). As to Proposition II, we find the trial court's failure to comply with the mandatory provisions of 22 O.S.Supp.1997, §982 concerning pre-sentence investigation reports was error that requires us to vacate the sentence and remand this matter for resentencing. *Owens v. State*, 747 P.2d 959, 961 (Ok1.Cr.1987); *Smith v. State*, 594 P.2d 784, 787 (Ok1.Cr.1979).

### DECISION

The Judgment of the trial court is **AFFIRMED**, the sentence is **VACATED** and the case is **REMANDED** for resentencing.

#### APPEARANCES AT TRIAL

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**OPINION BY: STRUBHAR, J.**  
LUMPKIN, P.J.: CONCUR IN RESULT  
JOHNSON, V.P.J.: CONCUR  
CHAPEL, J.: CONCUR  
LILE, J.: DISSENT

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