

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTOPHER ALAN VAUGHN,)
)
)
 Appellant,)
 V.)
)
 THE STATE OF OKLAHOMA)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2020-291

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

JUN 10 2021

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant Christopher Alan Vaughn was tried by jury and convicted of Trafficking in Illegal Drugs (63 O.S.Supp.2015, § 2-415) After Former Conviction of Two or More Felonies in the District Court of Carter County, Case No. CF-2018-52. The jury initially returned an improper second stage verdict by marking Appellant guilty of two or more prior convictions, one prior conviction, and no prior convictions. The judge voided the verdict as improper and sent the jury back to fill out a proper verdict form. They returned with a verdict marking Appellant guilty as having two or more prior felony convictions but did not write out a recommended sentence. The judge wrote in "life without parole" on the line provided for punishment.

After a sentencing hearing, the court sentenced Appellant to life in prison without the possibility of parole. It is from this judgment and sentence that Appellant appeals.

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

- I. The trial court abused its discretion when it incorrectly instructed the jury on punishment.
- II. The trial court abused its discretion when it improperly sentenced Appellant.

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 under the law and the evidence relief is warranted.

In Proposition I, Appellant asserts the trial court abused its discretion when it incorrectly instructed the jury that the only available punishment for a conviction for Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies, was life in prison without the possibility parole. Appellant argues that the statute in effect at the time of the crime provided for a range of punishment of not less than twenty (20) years to life imprisonment or life without

parole. In Proposition II, Appellant argues the trial court improperly sentenced him to life without the possibility of parole based upon the incorrect sentencing instructions. The State agrees with this contention and with Appellant's request to remand for resentencing under proper instructions. These propositions will be considered together.

Appellant was charged with committing the offense of Trafficking in Illegal Drugs on November 28, 2017. He was also charged with having three (3) prior felony convictions for Possession of Controlled Dangerous Substances with Intent to Distribute. The jury was instructed that if they found Appellant guilty after two (2) or more previous convictions, punishment was imprisonment for life without parole. The jury was also given sentencing options if they found Appellant guilty of having only one prior conviction or no prior convictions.

Defense counsel's objections to these instructions were overruled. We review the trial court's rulings for an abuse of discretion. *Reed v. State*, 2016 OK CR 10, ¶ 15, 373 P.3d 118, 122. "Absent an abuse of that discretion, this Court will not interfere with the trial court's judgment if the instructions as a whole, accurately

state the applicable law.” *Id.* “An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue.” *Id.*

“It is a well established rule of law that the appropriate criminal penalty is the penalty in effect at the time the defendant commits the crime.” *Bowman v. State*, 1990 OK CR 19, ¶ 3, 789 P.2d 631, 632. *See also Williams v. State*, 2002 OK CR 39, ¶ 4, 59 P.3d 518, 519 (“Appellant was entitled only to an application of the law which was in effect at the time he committed the crime”).

The statute in effect at the time of the crime in this case, 63 O.S.Supp.2015, § 2-415(D)(3) provides in part:

3. If the person has previously been convicted of two or more violations of this section or any provision of the Uniform Controlled Dangerous Substances Act which constitutes a felony, or a combination of such violations arising out of separate and distinct transactions, not less than twenty (20) years to life imprisonment or life without parole; provided, if the person has been previously convicted of two or more drug trafficking violations, the punishment shall be life without parole;

Appellant’s prior convictions for Possession of Controlled Dangerous Substances with Intent to Distribute are not trafficking offenses but fall under the Uniform Controlled Dangerous

Substances Act. 63 O.S.Supp.2012, § 2-401. Therefore, the jury should have been instructed that if they found Appellant had two or more prior convictions, he was subject to punishment of not less than twenty (20) years to life imprisonment or life without parole. Instructing the jury that the only possible punishment was life without parole was incorrect and an abuse of discretion. The trial court's reliance on a misinterpretation of the applicable sentencing range to sentence Appellant to life without the possibility of parole warrants remand to the district court for resentencing under proper instructions.

DECISION

The **JUDGMENT and SENTENCE is REVERSED AND REMANDED TO THE DISTRICT COURT FOR RESENTENCING.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE is ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CARTER COUNTY
THE HONORABLE THOMAS K. BALDWIN, ASSOCIATE DISTRICT
JUDGE

APPEARANCES AT TRIAL

COREY T. BRENNAN
KY CORLEY
1900 N.W. EXPRESSWAY, #601

APPEARANCES ON APPEAL

JEREMY STILLWELL
OKLA. INDIGENT DEFENSE
P.O. BOX 926

OKLA. CITY, OK 73118
COUNSEL FOR THE DEFENSE

NORMAN, OK 73070
COUNSEL FOR APPELLANT

CRAIG LADD
DISTRICT ATTY.
JESSICA UNDERWOOD
ASST. DISTRICT ATTY.
107 FIRST AVE. S.W.
ARDMORE, OK 73401
COUNSEL FOR THE STATE

MIKE HUNTER
ATTY. GENERAL OF OKLAHOMA
HANNAH WHITE
ASST. ATTY. GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, J.
KUEHN, P.J.: Concur
ROWLAND, V.P.J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur