

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN - 8 2001
JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FRANK FORD,

Appellant,

-vs-

STATE OF OKLAHOMA,

Appellee.

No. M-2000-230

ACCELERATED DOCKET ORDER

The Appellant, Frank Ford, appeals to this Court from his misdemeanor Judgment and Sentence in Case No. CM-99-326 in the District Court of Custer County. Oral argument in this Accelerated Docket appeal has been scheduled at 10:00 a.m. on Thursday, February 22, 2001.

In Case No. CM-99-326, the jury found Appellant guilty of Domestic Abuse and fixed punishment at ninety (90) days in the County Jail and One Thousand Dollar (\$1,000.00) fine. (2/10/00 Tr. 66-67; O.R. 69). The District Court entered judgment of conviction and sentenced Appellant to a term of one (1) year imprisonment, with all except the first ninety (90) days suspended. (2/17/00 Tr. 4; O.R. 70, 75-80).

In this appeal, Appellant raises two (2) propositions of error. Appellant first claims the trial court committed plain error by sentencing Appellant to a term in excess of the jury's verdict. Appellant's second proposition claims the trial court violated the province of the executive branch of government by ordering Appellant to serve time without any possible consideration for statutory credits against his sentence. The State has responded by confessing error as to Appellant's first proposition, and noting that Appellant has served his ninety (90)

days in the Custer County Jail rendering the second proposition moot.

In all cases, where the jury declares the punishment in their verdict within the limitations fixed by law, the District Courts of this State must render a judgment according to such verdict and are without authority to modify the punishment assessed by the jury in pronouncing judgment upon the conviction. 22 O.S.Supp.1999, § 926.1; *Luker v. State*, 1976 OK CR 135, ¶12, 552 P.2d 715, 719. Therefore, Appellant's Sentence in Case No. CM-99-326 in the District Court of Custer County should be, and is hereby, **REVERSED** and **REMANDED** with instructions that the District Court render the sentence in accordance with the jury's verdict.


Oral argument in this appeal scheduled at 10:00 a.m. on Thursday, February 22, 2001, should be, and is hereby, **CANCELED**.

IT IS SO ORDERED.


WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 8th day of January, 2001.



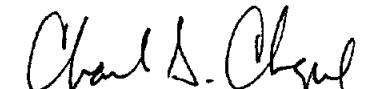
RETA M. STRUBHAR, Presiding Judge




GARY L. LUMPKIN, Vice Presiding Judge



CHARLES A. JOHNSON, Judge

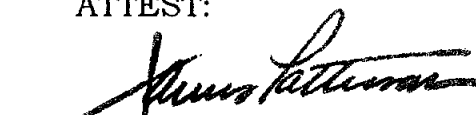


CHARLES S. CHAPEL, Judge



STEVE LILE, Judge

ATTEST:



Clerk