



COFFMAN v. STATE

2022 OK CR 23

Case Number: F-2018-1268

Decided: 09/29/2022

STEWART WAYNE COFFMAN, Appellant v. THE STATE OF OKLAHOMA, Appellee



Cite as: 2022 OK CR 23, ___ ___

OPINION

LUMPKIN, JUDGE:

¶1 Appellant Stewart Wayne Coffman was tried by jury and convicted of First Degree Manslaughter (21 O.S.2011, § 711), After Former Conviction of Two or More Felonies in the District Court of McCurtain County, Case No. CF-2017-0301. As punishment, the jury returned a verdict of forty (40) years in prison, and the trial court sentenced accordingly.¹ Appellant appeals from this conviction and sentence.

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

I. Mr. Joe Battiest, the victim in this case, is an enrolled member of the Choctaw Indian Tribe, and the crime occurred within the jurisdictional boundaries of the Choctaw Nation. As such, the State courts lack jurisdiction to prosecute [Appellant] for manslaughter, a crime only the federal government may prosecute if it occurs in Indian Country, thereby requiring this Court to dismiss the charges against Appellant.

II. Three out of the four prior felony convictions used to enhance the sentence in this case were more than ten years old, thus were not permitted to be used for enhancement purposes. Therefore, this Court must remand the matter for a new sentencing hearing whereby [Appellant] will be sentenced after one felony conviction, rather than four, or otherwise modify the sentence.

III. [Appellant] received ineffective assistance of counsel, in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution, and Article II, § 20 of the Oklahoma Constitution.

IV. Under the unique circumstances of this case, the forty year sentence assessed is excessive and should be modified.

¶3 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 no relief is warranted.

¶4 In Proposition I, Appellant relies on *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017) to argue that the State of Oklahoma did not have jurisdiction to prosecute him because his victim is an enrolled member of the Choctaw Nation and the crime occurred within the jurisdictional boundaries of the Choctaw Nation. Appellant does not claim that he is Indian.

¶5 During the pendency of this appeal, the United States Supreme Court decided *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Based upon *McGirt*, this Court determined that the State of Oklahoma did not have jurisdiction to prosecute Appellant because his case involved an Indian victim and the crime occurred within the boundaries of the Choctaw Nation Reservation,

which is an Indian Tribal Entity recognized by the federal government. His conviction was therefore reversed, and the case remanded to the District Court for dismissal. See *Coffman v. State*, Case No. F-2018-1268 (opinion not for publication, August 26, 2021). The mandate was issued September 15, 2021.

¶6 On June 29, 2022, the United States Supreme Court decided *Oklahoma v. Castro-Huerta*, 597 U.S. ___, 142 S.Ct. 2486 (2022) holding that the State of Oklahoma and the federal government have concurrent jurisdiction to prosecute a non-Indian defendant for crimes committed against an Indian victim in Indian Country. On June 30, 2022, the Supreme Court issued *Oklahoma v. Coffman*, No. 21-772 granting the petition for writ of *certiorari* filed by the State of Oklahoma, vacating this Court's judgment in Appellant's appeal and remanding the case to this Court for further consideration in light of the decision in *Castro-Huerta*. The Supreme Court's order places this case in the position it was before the issuance of our original opinion and we now consider all propositions of error raised by Appellant. This decision replaces the original opinion in this matter.

¶7 We find relief is not warranted in Proposition I. Appellant has not claimed to be Indian, nor has any evidence of his Indian status been offered in this case. Therefore, as Appellant is not Indian, we find that under *Castro-Huerta*, the State of Oklahoma had jurisdiction, concurrent with the federal government, to prosecute him for crimes against an Indian victim committed in Indian Country. *Castro-Huerta*, 142 S.Ct. at 2491. See also *State v. Ward*, 2022 OK CR 16, ¶ 4, ___ P.3d ___. This proposition of error is denied.

¶8 In Proposition II, Appellant contends the State improperly enhanced his sentence with stale convictions. The following prior convictions were used to enhance Appellant's sentence: CF-1998-29 from McCurtain County for two counts of Unlawful Delivery of Controlled Dangerous Substance with sentences of twenty-five (25) years with all but the first ten (10) years suspended in each count. Also from McCurtain County, Case Nos. CF-1992-176 for Second Degree Burglary with a six (6) year sentence; CF-1988-45 for Larceny of a Motor Vehicle with an eight (8) year sentence; and CF-1984-42 for Assault with a Dangerous Weapon with a five (5) year sentence. Appellant admits that under 21 O.S.2011, § 51.2, the 1998 conviction was properly used for enhancement purposes because the sentences imposed in that case would not be fully executed until 2023. He asserts that the other prior convictions were stale and using them to enhance his sentence presented the jury with the wrong range of punishment.

¶9 Appellant acknowledges that trial counsel did not raise an objection to the use of the prior convictions. Our review therefore is for plain error. *Tafolla v. State*, 2019 OK CR 15, ¶ 9, 446 P.3d 1248, 1256. Under the standard set forth in *Simpson v. State*, 1994 OK CR 40, ¶¶ 10, 26, 30, 876 P.2d 690, 694, 699, 701, we determine whether Appellant has shown an actual error, which is plain or obvious, and which affects his substantial rights. This Court will only correct plain error if the error seriously affects the fairness, integrity, or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.* See also *Duclos v. State*, 2017 OK CR 8, ¶ 5, 400 P.3d 781, 783; *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

¶10 Under 21 O.S.2011, § 51.2 "no person shall be sentenced as a second and subsequent offender under Section 51.1 of this title, . . . when a period of ten (10) years has elapsed since the completion of the sentence imposed on the former conviction; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony." 2 See also *Tucker v. State*, 2016 OK CR 29, ¶ 4, 395 P.3d 1, 3 (restating §§ 51.1(A) and 51.2).

¶11 A sentence is completed when the Department of Corrections has relinquished their control of a defendant and unconditionally released him. *Harmon v. State*, 1988 OK CR 12, ¶ 14, 748 P.2d 992, 995 (citing *Nipps v. State*, 1978 OK CR 30, ¶ 6, 576 P.2d 310, 311-12). The burden is on the defendant to show that the sentence of a former conviction has been satisfied for more than ten (10) years and thus cannot support a sentence enhancement under Section 51.2. *Tucker*, 2016 OK CR 29, ¶ 6, 395 P.3d at 3 (citing *Goodwin v. State*, 1986 OK CR 180, ¶ 8, 730 P.2d 1202, 1204).

¶12 Here, Appellant has not met his burden of coming forward with evidence to show that the sentence in any of his former convictions had been satisfied for more than ten (10) years and therefore was not admissible for enhancement purposes. Appellant directs us to the Supplemental Information filed in his case that lists the sentences and sentencing dates of the prior convictions to be used for enhancement in his case. However, this information does not show when Appellant discharged those prior sentences. He has not presented any information or evidence showing when the prior sentences were discharged.

¶13 Based upon the record before us, since 1984, Appellant has not gone ten (10) years without a felony conviction. The 1998 conviction, which Appellant admits was properly admissible for enhancement purposes, served to revitalize the prior, successive felony convictions, fewer than ten (10) years apart, for enhancement purposes. See *Robinson v. State*, 1991 OK CR 23, ¶ 3, 806 P.2d 1128, 1129 (citing *Venable v. State*, 1977 OK CR 232, ¶ 9, 567 P.2d 1006, 1009). Accordingly, evidence of all the former convictions in this case was admissible for the purpose of sentence enhancement. Finding no error, we find no plain error and this proposition is denied.

¶14 In Proposition III, Appellant claims he was denied the effective assistance of counsel by counsel's failure to raise the jurisdictional issue addressed in Proposition I of this appeal and the failure to object to the use of the prior convictions as addressed in Proposition II. We review Appellant's claim of ineffective assistance under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Sanders v. State*, 2015 OK CR 11, ¶ 29, 358 P.3d 280, 287. In order to show that counsel was ineffective, Appellant must show both deficient performance and prejudice. *Id.* (citing *Strickland*, 466 U.S. at 687).

¶15 In *Strickland*, the Supreme Court said there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional conduct, *i.e.*, an appellant must overcome the presumption that, under the circumstances, counsel's conduct constituted sound trial strategy. *Sanders*, 2015 OK CR 11, ¶ 29, 358 P.3d at 287. To establish prejudice, Appellant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* A reasonable probability is a probability sufficient to undermine the confidence in the outcome. *Id.* (citing *Harrington v. Richter*, 562 U.S. 86, 111--112 (2011)). When a claim of ineffective assistance of counsel can be disposed of on the ground of lack of prejudice, that course should be followed. *Strickland*, 466 U.S. at 696.

¶16 Appellant first finds counsel ineffective for failing to challenge the State's jurisdiction to prosecute him. This claim is largely dependent on information contained in a contemporaneously filed *Motion to Supplement the Record on Appeal or, in the Alternative, Application for Evidentiary Hearing on Sixth Amendment Claims*. Rule 3.11(B)(3)(b), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022) allows an appellant to request an evidentiary hearing when it is alleged on appeal that trial counsel was ineffective for failing to utilize evidence which could have been made available during the course of trial. *Frederick v. State*, 2017 OK CR 12, ¶ 164, 400 P.3d 786, 826-827 (overruled on other grounds, *Williamson v. State*, 2018 OK CR 15, ¶ 51, n.1., 422 P.3d 752, 762, n.1). Once an application has been properly submitted, along with supporting affidavits, this Court reviews the application to see if it contains sufficient evidence to show this Court by clear and convincing evidence there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence. *Id.* The attachments filed in support of a request for an evidentiary hearing are not considered, by reason of their filing with this Court, part of the trial record. *Bland v. State*, 2000 OK CR 11, ¶ 115, 4 P.3d 702, 731; *Dewberry v. State*, 1998 OK CR 10, ¶ 9, 954 P.2d 774, 776. The attachments will be considered only in regards to the application for evidentiary hearing on Sixth Amendment claims.

¶17 In Exhibit A, Kim Marks, Investigator for the Oklahoma Indigent Defense System, states that in the course of assisting appellate counsel, she retrieved records showing that the victim in this case was a registered member with the Choctaw Nation and the crime occurred within the boundaries of the Choctaw Nation. Attachments A-1 and A-2 support her statements.

¶18 In light of *Castro-Huerta*, Appellant has not shown clear and convincing evidence suggesting a strong possibility that trial counsel was ineffective for failing to utilize evidence of the Indian status of the victim and the location of the crime. Such evidence does not warrant relief in Appellant's case under *Castro-Huerta*. Appellant's request to remand for evidentiary hearing to address Sixth Amendment claims is denied.

¶19 When we review and deny a request for an evidentiary hearing on a claim of ineffective assistance under the standard set forth in Rule 3.11, we necessarily make the adjudication that Appellant has not shown defense counsel to be ineffective under the more rigorous federal standard set forth in *Strickland*. *Simpson v. State*, 2010 OK CR 6, ¶ 53, 230 P.3d 888, 906. Therefore, the claims of ineffective assistance of counsel raised in the appellate brief, which are the same claims raised in the 3.11 motion, are hereby denied.

¶20 Regarding Appellant's claim that counsel was ineffective for failing to challenge the allegedly "stale" convictions, as we addressed in Proposition II, all of the prior convictions were properly admissible for enhancement purposes. Any objection by counsel would have been denied. As we have repeatedly held, this Court will not find counsel ineffective for failing to raise

objections that would have been denied. *Frederick*, 2017 OK CR 12, ¶ 199, 400 P.3d at 832. Having thoroughly reviewed Appellant's claims of ineffective assistance, we find Appellant has failed to show either deficient performance or prejudice. This proposition is denied.

¶21 In Proposition IV, Appellant contends that his forty (40) year sentence is excessive as "the imposition of a 40 year sentence on a man approaching 60 years old and in failing health, should shock the Court's conscience." Appellant asks that we modify his sentence in the interest of justice.

¶22 The question of excessiveness of punishment must be determined by a study of all the facts and circumstances of each case. *Bivens v. State*, 2018 OK CR 33, ¶ 3, 431 P.3d 985, 996. Where the punishment is within the statutory limits, the sentence will not be disturbed unless under all the facts and circumstances of the case it is so excessive as to shock the conscience of the Court. *Id.*

¶23 Appellant was convicted of First Degree Manslaughter and sentenced to forty (40) years in prison with credit for time served. The range of punishment for his offense, After Former Conviction of Two or More Felonies, is twenty (20) years to life in prison. His forty (40) year sentence is well within statutory range.

¶24 A review of the evidence proved beyond a reasonable doubt that, in an unprovoked attack, Appellant beat the victim to death, hid the body, and then attempted to dispose of the body by secreting it in a trailer and setting the trailer on fire. The evidence also showed Appellant's sentence was properly enhanced with four (4) prior felony convictions. Based upon our review of all the facts and circumstances of the case, we find Appellant's sentence is not excessive and modification is not warranted. This proposition is denied.

DECISION

¶25 The **JUDGMENT and SENTENCE** is **AFFIRMED**. *The Motion to Supplement the Record on Appeal or, in the Alternative, Application for Evidentiary Hearing on Sixth Amendment Claims* is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF McCURTAIN COUNTY
THE HONORABLE MICHAEL DeBERRY, DISTRICT JUDGE

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ROWLAND, P.J.: Concur
HUDSON, V.P.J.: Concur
LEWIS, J.: Concur
MUSSEMAN, J.: Concur

FOOTNOTES

LUMPKIN, JUDGE:

¹ Appellant must serve 85% of his sentence before becoming eligible for consideration for parole. 21 O.S.2011, § 13.1.

² This is the language of the statute at the time of Appellant's crime. In 2018, the "moral turpitude" language was taken out but that is of no consequence to our case.

Citationizer[®] Summary of Documents Citing This Document

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Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1988 OK CR 12, 748 P.2d 992,</u>	<u>HARMON v. STATE</u>	Discussed
<u>1991 OK CR 23, 806 P.2d 1128,</u>	<u>ROBINSON v. STATE</u>	Discussed
<u>1994 OK CR 40, 876 P.2d 690,</u>	<u>SIMPSON v. STATE</u>	Discussed
<u>1977 OK CR 232, 567 P.2d 1006,</u>	<u>VENABLE v. STATE</u>	Discussed
<u>1978 OK CR 30, 576 P.2d 310,</u>	<u>NIPPS v. STATE</u>	Discussed
<u>2006 OK CR 19, 139 P.3d 907,</u>	<u>HOGAN v. STATE</u>	Discussed
<u>2010 OK CR 6, 230 P.3d 888,</u>	<u>SIMPSON v. STATE</u>	Discussed

Cite Name**Level**

<u>2015 OK CR 11, 358 P.3d 280,</u>	<u>SANDERS v. STATE</u>	Discussed at Length
<u>2016 OK CR 29, 395 P.3d 1,</u>	<u>TUCKER v. STATE</u>	Discussed at Length
<u>2017 OK CR 8, 400 P.3d 781,</u>	<u>DUCLOS v. STATE</u>	Discussed
<u>2017 OK CR 12, 400 P.3d 786,</u>	<u>FREDERICK v. STATE</u>	Discussed at Length
<u>2018 OK CR 15, 422 P.3d 752,</u>	<u>WILLIAMSON v. STATE</u>	Discussed
<u>2018 OK CR 33, 431 P.3d 985,</u>	<u>BIVENS v. STATE</u>	Discussed
<u>2019 OK CR 15, 446 P.3d 1248,</u>	<u>TAFOLLA v. STATE</u>	Discussed
<u>2000 OK CR 11, 4 P.3d 702, 71 OBJ</u> <u>1304,</u>	<u>Bland v. State</u>	Discussed
<u>2022 OK CR 16, 516 P.3d 261,</u>	<u>STATE v. WARD</u>	Cited
<u>1998 OK CR 10, 954 P.2d 774, 69 OBJ</u> <u>669,</u>	<u>Dewberry v. State</u>	Discussed
<u>1986 OK CR 180, 730 P.2d 1202,</u>	<u>GOODWIN v. STATE</u>	Discussed

Title 21. Crimes and Punishments

Cite	Name	Level
<u>21 O.S. 13.1,</u>	<u>Required Service of Minimum Percentage of Sentence - Offenses Specified</u>	Cited
<u>21 O.S. 51.2,</u>	<u>Punishment for Second and Subsequent Offenses after Conviction of Offense</u> <u>Punishable by Imprisonment in State Penitentiary -- Exclusions</u>	Discussed
<u>21 O.S. 711,</u>	<u>First Degree Manslaughter</u>	Cited