2024 OK CR 7
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLES HALIBURTON,	)	
	)	
Appellant,	)	**FOR PUBLICATION**
	)	
v.	)	**Case No. F-2022-367**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

MUSSEMAN, VICE PRESIDING JUDGE:

¶1 Appellant, Charles Haliburton, appeals his Judgment and Sentence from the District Court of Comanche County, Case No. CF-2018-355, for Lewd or Indecent Acts to a Child Under 16 in violation of 21 O.S.Supp.2017, § 1123(A)(2).

¶2 The Honorable Gerald F. Neuwirth, District Judge, presided over Haliburton's jury trial. The jury found Appellant guilty and assessed punishment of ten (10) years imprisonment. The trial court sentenced the defendant in accordance with the jury's verdict and ordered three (3) years of post-imprisonment supervision.[1]

[1] Appellant will be required to serve 85% of his sentence before becoming eligible for parole consideration. 21 O.S.Supp.2015, § 13.1.

Haliburton was granted an appeal out of time on April 8, 2022, in Case No. PC-2022-2965. Haliburton appeals his Judgment and Sentence and raises the following issue:

> I. whether after the State failed to establish the elements of the charged offense at preliminary hearing, counsel's failure to file a motion to quash constituted ineffective assistance.

¶3 We affirm the Judgment and Sentence of the district court.

¶4 In his sole proposition, Appellant claims that he was denied the effective assistance of counsel when his counsel failed to file a motion to quash following the State's presentation at preliminary hearing. Specifically, Appellant alleges that the State did not put on evidence that the victim was under the age of sixteen, a required element for the charged offense of lewd or indecent acts with a child under the age of 16.

¶5 We review claims of ineffective assistance of counsel *de novo,* to determine whether counsel's constitutionally deficient performance, if any, prejudiced the defense so as to deprive the defendant of a fair trial with reliable results. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Malone v. State,* 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206. Under *Strickland*, a petitioner must show

both (1) deficient performance, by demonstrating that his counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687-89. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

¶6 *Strickland*'s demanding standard for deficient performance is satisfied only by proof of unprofessional errors so serious that the attorney was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Browning v. State*, 2006 OK CR 8, ¶ 14, 134 P.3d 816, 830. This Court need not determine whether counsel's performance was deficient if there is no showing of harm. *See Malone*, 2013 OK CR 1, ¶ 16, 293 P.3d at 207. When a claim of ineffectiveness of counsel can be disposed of on the ground of lack of prejudice, that course should be followed. *Strickland*, 466 U.S. at 697.

¶7 Unlike most claims of ineffective assistance of counsel presented to this Court, this case presents a purely legal question that must be decided: whether the granting of a motion to quash after the State's presentation of evidence at preliminary hearing bars

further prosecution of the same offense without the State showing new evidence after the dismissal, as there can be no prejudice in this case if there is no bar to prosecution. Our decision falls squarely on the language of Title 22, Section 504.1(D) of the Oklahoma Statutes which states that "[a]n order to set aside an indictment or information on judgment for the defendant on a motion to quash for insufficient evidence, as provided in this section, shall not be a bar to further prosecution for the same offense."

¶8 A fundamental principle of statutory construction is to ascertain and give effect to the intention of the Legislature. *Gerhart v. State*, 2015 OK CR 12, ¶ 14, 360 P.3d 1194, 1198. Legislative intent is first determined by the plain and ordinary language of the statute. *Newlun v. State*, 2015 OK CR 7, ¶ 8, 348 P.3d 209, 211. "A statute should be given a construction according to the fair import of its words taken in their usual sense, in connection with the context, and with reference to the purpose of the provision." *Jordan v. State*, 1988 OK CR 227, ¶ 4, 763 P.2d 130, 131.

¶9 It is clear from the plain language of Section 504.1(D) that the Legislature did not intend to prohibit refiling of the same offense if a motion to quash was sustained. Prior to the enactment of Section

504.1, our decisions in *Chase v. State*, 1973 OK CR 453, 517 P.2d 1142 and *Jones v. State*, 1971 OK CR 27, 481 P.2d 169, required the State to provide new evidence to the same magistrate that could overcome the prior dismissal if refiling was sought. The Legislature enacted Section 504.1 in 1990, years after our decisions in *Chase* and *Jones*, and chose not to include a requirement that the prosecution provide new evidence prior to refiling. "It is not our place to interpret a statute to address a matter the Legislature chose not to address, even if we think that interpretation might produce a reasonable result." *State v. Young*, 1999 OK CR 14, ¶ 27, 989 P.2d 949, 955. This Court's decision in *Tilley v. State ex rel. Scaggs*, 1993 OK CR 52, ¶ 6, 869 P.2d 847, 849, has been interpreted to still require the State to produce new evidence prior to refiling, contrary to the Legislature's clear intent. Therefore, *Tilley* is hereby expressly overruled to the extent it is inconsistent with today's opinion.

¶10 As Section 504.1(D) does not bar the State from further prosecution for the same offense, the State is not required to show new evidence prior to refiling. The evidence necessary to prove all elements of the charged offense were presented at trial. Therefore, Appellant cannot show that his counsel's failure to seek a motion to

quash following the State's evidence at preliminary hearing impacted the outcome of his case. As Appellant cannot show prejudice, we are not required to determine if his counsel's performance was deficient. Appellant's claim is denied.

DECISION

¶11 The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2024), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY, THE HONORABLE GERALD F. NEUWIRTH, DISTRICT JUDGE

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OPINION BY: MUSSEMAN, V.P.J.
ROWLAND, P.J.: Concur
LUMPKIN, J.: Concur in Part/Dissent in Part
LEWIS, J.: Concur
HUDSON, J.: Concur

LUMPKIN, JUDGE: CONCURRING IN PART/DISSENTING IN PART

¶1 I concur in the result in this case. However, I dissent from the decision to overrule *Tilley v. State ex rel. Scaggs*, 1993 OK CR 52, 869 P.2d 847. *Tilley* is still good law and nothing in this case warrants overruling it.

¶2 The Court correctly determines the Legislature's enactment of 22 O.S.2021, § 504.1(D) removed any need for the State to present additional evidence upon re-filing a case after the magistrate grants a defendant's motion to quash for insufficient evidence at preliminary hearing. However, *Tilley* is not an analysis of Section 504.1(D) and nothing in *Tilley* conflicts with the Court's decision herein.

¶3 In *Tilley*, defendant filed motion to quash after preliminary hearing based on the State's failure to sufficiently prove the *corpus delicti* of the crime, which the district court granted. The court ordered the charge dismissed and exonerated the bond but stayed the dismissal and exoneration pending the State's appeal, which it announced in court that it would pursue. The court ordered an exhumation of the victim's body, and the State filed its appeal after the exhumation occurred. Thereafter, the State filed a motion to reconsider with the district court regarding its grant of the motion to

quash. The district court found it maintained jurisdiction over the motion to quash since the dismissal was stayed and remanded the case for further preliminary hearing based upon the autopsy report after exhumation of the body.

¶4 Defendant sought a writ of prohibition precluding the district court's resumption of the case. He argued the only avenue for the State to proceed was with the normal appeal process rather than through a motion to reconsider. This Court agreed and granted the writ, holding where a motion to quash based on insufficient evidence presented at preliminary hearing is granted, the State cannot file a motion to reconsider rather than appealing the decision or refiling the case. Once the State filed its appeal, the district court lost jurisdiction to take further action in the case. *Tilley*, 1993 OK CR 52, ¶ 6, 869 P.2d at 849. This Court did voice its agreement, in *dicta*, that the State should have been required to either appeal the decision on the motion to quash through 22 O.S.1991, § 1053(4) or to refile the case based upon "new information" acquired since the dismissal, citing *Chase v. State*, 1973 OK CR 453, 517 P.2d 1142. *Id.* However, this Court's decision in *Tilley* did not rest upon an analysis of Section

504.1. As a result, *Tilley* is not germane to the issue in this case which is the construction and application of Section 504.1.

¶5 Because *Tilley* is still good law and its holding does not conflict with the Court's decision herein, I dissent from the decision to overrule it.