

ORIGINAL



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

LAVONTE ANTONIO JOHNSON,

)

NOT FOR PUBLICATION

Petitioner,

)

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v.

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Case No. C-2018-372

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THE STATE OF OKLAHOMA,

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)

Respondent.

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FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 29 2019

**SUMMARY OPINION DENYING PETITION
FOR WRIT OF CERTIORARI**

JOHN D. HADDEN
CLERK

LEWIS, PRESIDING JUDGE:

Lavonte Antonio Johnson, Petitioner, pled guilty to using a vehicle to facilitate the intentional discharge of a firearm, in violation of 21 O.S.2011, § 652(B), in the District Court of Oklahoma County, Case No. CF-2014-2033. The Honorable Susan K. Johnson, Special Judge, accepted the plea and deferred judgment for five (5) years subject to rules and conditions of probation. The State later moved to accelerate the judgment, alleging that Petitioner had violated the rules and conditions of probation by possessing a firearm and jumping bail. The Honorable Ray C. Elliott, District Judge, accelerated judgment and sentenced

Petitioner to twenty-seven (27) years imprisonment.¹ Petitioner filed a motion to withdraw his guilty plea, which the trial court denied. Petitioner now seeks the writ of certiorari in the following propositions of error:

1. Mr. Johnson did not knowingly and voluntarily enter his plea of guilty, and thus the district court erred when it denied Mr. Johnson's application to withdraw his guilty plea;
2. Mr. Johnson received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article II, §§ 7 and 20 of the Oklahoma Constitution;
3. Mr. Johnson's 27-year sentence is excessive under the Eighth Amendment and shocks the conscience.

Certiorari review is limited to whether the plea was entered voluntarily and intelligently before a court of competent jurisdiction, *Weeks v. State*, 2015 OK CR 16, ¶ 11, 362 P.3d 650, 654; whether the sentence is excessive, *Whitaker v. State*, 2015 OK CR 1, ¶ 9, 341 P.3d 87, 90; whether counsel was constitutionally effective at either the plea hearing or the withdrawal hearing, *Tate v. State*, 2013 OK CR 18, ¶ 38, 313 P.3d 274, 284-85, *Lozoya v. State*, 1996 OK CR

¹Appellant must serve 85% of his sentence before being eligible for consideration for parole. 21 O.S.Supp.2015, § 13.1(5).

55, 932 P.2d 22; and whether the State has the power to prosecute the defendant at all, *Weeks*, 2015 OK CR 16, ¶ 12, 362 P.3d at 654.

In Proposition One, Petitioner argues that the record does not establish a knowing and voluntary plea due to plea counsel's incorrect notation on the plea of guilty summary of facts form that the crime was not an 85% crime. A valid plea "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970). We review a ruling on a motion to withdraw a plea for an abuse of discretion, *Carpenter v. State*, 1996 OK CR 56, ¶ 40, 929 P.2d 988, 998. An abuse of discretion is a clearly erroneous conclusion or judgment, contrary to the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P. 3d 161, 170. We find that the trial court did not abuse its discretion in concluding that despite the scrivener's error on the plea form, Petitioner was properly advised that this was an 85% crime. Proposition One is denied.

In Proposition Two, Petitioner argues that trial counsel's failure to adequately advise him of the applicability of the 85% rule to his crime denied him the effective assistance of counsel on his

plea of guilty. See *Ferguson v. State*, 2006 OK CR 36, ¶ 4, 143 P.3d 218, 219 (holding failure to advise defendant of 85% rule rendered guilty plea involuntary). Reviewing this claim according to the two-pronged standard of deficient performance and prejudice established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), we find Petitioner has not shown that counsel was ineffective. No relief is required. Proposition Two is denied.

In Proposition Three, Petitioner argues that his twenty-seven (27) year sentence is excessive. A sentence within the statutory range will not be modified on appeal unless, considering all the facts and circumstances, it shocks the conscience of the Court. *Maxwell v. State*, 1989 OK CR 22, ¶ 12, 775 P.2d 818, 820. Petitioner violated his probation for a violent weapons-related felony by possessing a firearm and jumping bail. The resulting sentence after acceleration of the judgment does not shock the conscience. Proposition Three is without merit.

DECISION

The petition for the writ of certiorari is **DENIED**. The Judgment and Sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

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NO RESPONSE NECESSARY

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