

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA

STARLYN SEAN HILL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case No. C-2021-504

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB - 9 2023

JOHN D. HADDEN
CLERK

SUMMARY OPINION

MUSSEMAN, JUDGE:

Petitioner, Starlyn Sean Hill, appeals the denial of his motion to withdraw guilty plea in the District Court of Grady County in Case No. CF-2020-313. Hill entered a plea of guilty to:

- Count 1: Aggravated Possession of Child Pornography, in violation of 21 O.S.2011, § 1040.12a;
- Count 2: Rape – First Degree, in violation of 21 O.S.2011, § 1115;
- Count 3: Rape – First Degree, in violation of 21 O.S.2011, § 1115;
- Count 4: Rape – First Degree, in violation of 21 O.S.Supp.2002, § 1115;
- Count 5: Child Abuse, in violation of 21 O.S.Supp.2019, § 843.5;

- Count 6: Lewd or Indecent Acts to Child Under 12, in violation of 21 O.S.Supp.1999, § 1123;
- Count 7: Lewd or Indecent Acts to Child Under 16, in violation of 21 O.S.Supp.2017, § 1123;
- Count 8: Lewd or Indecent Proposals to Child Under 16, in violation of 21 O.S.Supp.2017, § 1123;
- Count 9: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2018, § 888;
- Count 10: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2018, § 888;
- Count 11: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2000, § 888;
- Count 12: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2000, § 888;
- Count 13: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2000, § 888;
- Count 14: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2000, § 888;
- Count 15: Pornography – Procure / Produce / Distribute / Possess Juvenile Pornography, in violation of 21 O.S.2001, § 1021.2;
- Count 16: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2002, § 888;
- Count 17: Forcible Oral Sodomy, in violation of 21 O.S.Supp.2002, § 888;

Count 18: Lewd or Indecent Acts to Child Under 16, in violation of 21 O.S.Supp.2003, § 1123; and

Count 19: Unlawful Possession of Drug Paraphernalia, in violation of 63 O.S.2011, § 2-405(B).

The Honorable Regina Lowe, Special Judge, accepted Hill's guilty plea and sentenced him to forty years imprisonment as to each of Counts 1-6, twenty years imprisonment as to each of Counts 7-18, and one year in the county jail as to Count 19.¹ Judge Lowe ordered all counts to be served concurrently with each other and awarded credit for all time served. Hill filed a timely motion to withdraw his plea. After a hearing on the motion to withdraw, the District Court denied his motion and Hill perfected the instant certiorari appeal raising the following issues:

- (1) whether his plea was entered knowingly, intelligently, and voluntarily because he was coerced and rushed into pleading without sufficient deliberation;
- (2) whether his plea was entered knowingly, intelligently because he was misadvised of the proper sentence as to two counts;
- (3) whether the statute of limitations had expired on ten counts for which he has been convicted;

¹ Petitioner will be required to serve 85% of his sentence on Counts 1-18 before becoming eligible for parole consideration. 21 O.S.Supp, 2015, § 13.1.

- (4) whether the court failed to establish a sufficient factual basis to support his guilty plea;
- (5) whether he was denied effective assistance of plea counsel; and
- (6) whether an accumulation of error deprived him of a fair proceeding.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that relief is required under the law and evidence.

Certiorari review is ordinarily limited to the following issues: 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 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 III, Petitioner claims that the statute of limitations expired on ten of the charges against him prior to the filing of the Information. In *Cox v. State*, 2006 OK CR 51, ¶¶ 4, 9, 152 P.3d 244, 248-49, *overruled on other grounds in State v. Vincent*, 2016 OK CR 7, ¶ 9, 371 P.3d 1127, we carefully considered whether the statute of limitations is a jurisdictional requirement or an affirmative defense, and found that the temporal jurisdictional limits on the power of the court to adjudicate a case, as well as the State's power to prosecute, make the statute of limitations a jurisdictional bar.² We further held in *Cox* that an assertion that the prosecution is barred by the statute of limitations will not be deemed waived by a defendant's silence and a violation of a statute of limitations may be raised for the first time on appeal. *Id.* at ¶ 9.

A review of the entire record before us shows that the Bindover Information filed April 15, 2021, includes charges that were filed outside the applicable statute of limitations. Title 22, Section 152 of the Oklahoma Statutes, at all times relevant to those charges

² We are not bound by the United States Supreme Court's analysis of the federal statute of limitations set forth in 18 U.S.C. § 3282 in *Mussachio v. U.S.*, 577 U.S. 237 (2016). See *Dennis v. State*, 1999 OK CR 23, ¶ 20, 990 P.2d 277, 285-86.

required prosecution no later than 7 years after discovery of the crime, and discovery of the crime was limited to one year after a minor reaches the age of majority. 22 O.S. § 152. Counts 11 through 18 all include victims that were 31 or 32 at the time of reporting the crime, and therefore could not have been discovered or prosecuted within the applicable limitation. Counts 4 and 6 of the Bindover Information include insufficient details to determine whether they are outside the statute of limitations, but sufficient details to make this Court question the district court's jurisdiction. As the record is insufficient for this Court to determine whether Counts 4 and 6 are outside the limitations period, we cannot expect that Petitioner would have been able to make such a determination prior to his plea.

The record does not show Petitioner affirmatively waived his challenge to the statute of limitations on any of the charged offenses. The trial court's acceptance of Petitioner's plea without a valid waiver was error. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). Without a valid waiver, the record before us does not support that Petitioner's plea was voluntary and intelligent, or that the State had the power to prosecute Petitioner on at least eight, possibly ten, of the nineteen

counts. Due to these errors, Petitioner's plea was not voluntary and intelligent. Petitioner is entitled to withdraw his plea.

As the relief warranted in this Proposition allows Petitioner to withdraw his plea, the resolution renders Propositions I, II, IV, V and VI of Petitioner's brief moot.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. The Judgment and Sentence is **VACATED**. The case is **REMANDED** with directions that Hill be permitted to withdraw his guilty plea and that the district court conduct further proceedings not inconsistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY,
THE HONORABLE REGINA LOWE, SPECIAL JUDGE**

**APPEARANCES IN THE
DISTRICT COURT**

JEFF COE
ATTORNEY AT LAW
2548 NW EXPRESSWAY,
SUITE 102
OKLAHOMA CITY, OK 73112
COUNSEL FOR DEFENDANT AT
PLEA HEARING

AL HOCH
OKLAHOMA INDIGENT DEFENSE
SYSTEM
803 ROBERT S. KERR
OKLAHOMA CITY, OK 73106
COUNSEL FOR DEFENDANT AT
SENTENCING

REBECCA BRINK
ASST. DISTRICT ATTORNEY
217 N. THIRD STREET
CHICKASHA, OK 73018
COUNSEL FOR STATE

APPEARANCES ON APPEAL

ARIEL PARRY
APPELLATE DEFENSE
COUNSEL
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR PETITIONER

JOHN M. O'CONNOR
ATTORNEY GENERAL OF
OKLAHOMA
JOSHUA L. LOCKETT
ASSISTANT ATTORNEY
GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR RESPONDENT

OPINION BY: MUSSEMAN, J.

ROWLAND, P.J.: Concur
HUDSON, V.P.J.: Concur
LUMPKIN, J.: Specially Concur
LEWIS, J.: Concur in Results

LUMPKIN, JUDGE: SPECIALLY CONCURRING:

I concur with the Court's decision in this case and the denial of the State's request to overrule Cox. I write separately to address the foundation supporting our holding in Cox that a statute of limitations is jurisdictional.

At the root of the establishment of this nation and the formulation of the Republic is the concept of individual rights. The Constitution was enacted to protect those rights and the legislative branch of our government is tasked with the responsibility to craft laws to protect those rights and limit the ability of the government to interfere with them. The Oklahoma Legislature passes laws to establish what constitutes a crime and what punishment accompanies conviction of that crime. As part of the regulation of the government's power against its citizens, the Legislature has prescribed time limits within which the government has the authority to prosecute crimes against them. These are statutes of limitation.

The enactment of a statute of limitation by the Legislature has nothing to do with procedure or providing an accused with an affirmative defense in a criminal case. It defines the time limits during which the State may prosecute a criminal case. The establishment of

a statute of limitation, setting out the time limits during which the government can act against a citizen serves a two-fold purpose. First, it protects the citizen from having to face stale prosecution of crimes long after they occur and second, it prompts state agencies to timely investigate claims of criminal conduct. The Legislature, when needed, has enacted specific provisions to address exceptional circumstances regarding when a statute of limitations begins to run. One such example is 22 O.S.Supp.2017, § 152(C)(1), which provides for prosecution of various crimes against minors until the victim's forty-fifth birthday. There is also a statutory section providing for when the statute of limitations is tolled due to the actions of a person who commits a crime. 22 O.S.2021, § 153.

The foundational aspect of the statute of limitations is that it is the way the Legislature tells its executive law enforcement agencies the time frame in which they have the power to prosecute criminal actions against citizens. The State has a duty to act promptly in the investigation and prosecution of crimes committed against citizens. This prompt response ensures victims receive the justice they deserve and those committing crimes receive the due process the Constitution requires.