

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROBERT DENNIS MARTIN,

) NOT FOR PUBLICATION

Appellant,

) No. F-2017-426

vs.

THE STATE OF OKLAHOMA,

Appellee.

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

S U M M A R Y O P I N I O N

MAY 17 2018

KUEHN, JUDGE:

Appellant, Robert Dennis Martin, was convicted by a jury in Caddo County District Court, Case No. CF-2016-27, of Aggravated Trafficking in Methamphetamine (63 O.S.Supp.2015, § 2-415(D)), After Conviction of a Felony. On April 19, 2017, the Honorable S. Wyatt Hill, Associate District Judge, sentenced him in accordance with the jury's recommendation to life imprisonment and a fine of \$500,000. This appeal followed.

Appellant raises seven propositions of error in support of his appeal:

PROPOSITION I. THE SEARCH OF MR. MARTIN'S VEHICLE VIOLATED HIS FOURTH AMENDMENT RIGHTS BECAUSE THE AGENT IMPERMISSIBLY EXTENDED THE DURATION OF THE STOP, ACCORDINGLY, THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS.

PROPOSITION II. MR. MARTIN'S FOURTEENTH AMENDMENT DUE PROCESS RIGHTS PURSUANT TO THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN THE JURY WAS ERRONEOUSLY INSTRUCTED AS TO THE RANGE OF PUNISHMENT FOR AGGRAVATED TRAFFICKING, METHAMPHETAMINE.

PROPOSITION III. ADMISSION OF OTHER BAD ACTS EVIDENCE PREJUDICED THE JURY, DEPRIVED MR. MARTIN OF HIS FUNDAMENTAL RIGHT TO A FAIR TRIAL, AND WARRANTS REVERSAL OF THE SENTENCES.

APPENDIX A

PROPOSITION IV. THE TRIAL COURT FAILED TO PROPERLY INSTRUCT THE JURY THAT MR. MARTIN WOULD RECEIVE ADDITIONAL PUNISHMENT OF METHAMPHETAMINE REGISTRATION IF FOUND GUILTY.

PROPOSITION V. ALTERNATIVELY, REVERSAL IS REQUIRED BECAUSE ANY FAILURE TO ADEQUATELY AND COMPLETELY PRESERVE ISSUES FOR REVIEW IN THIS COURT WAS THE RESULT OF THE INEFFECTIVE ASSISTANCE OF COUNSEL.

PROPOSITION VI. MR. MARTIN'S SENTENCE IS EXCESSIVE.

PROPOSITION VII. THE CUMULATIVE EFFECT OF ALL THE ERRORS ADDRESSED ABOVE DEPRIVED MR. MARTIN OF A FAIR TRIAL.

After thorough consideration of these propositions, and the record on appeal, we affirm. The charge in this case stems from a traffic stop of Appellant's vehicle on Interstate 40 in January 2016. The Oklahoma Highway Patrol Trooper conducting the stop noticed a number of suspicious facts during the encounter. After issuing Appellant a warning, returning his paperwork, and bidding him farewell, the officer asked if he could talk to Appellant about a few things; Appellant agreed. Eventually the officer asked if he could search the vehicle for contraband. Appellant declined, but suggested the alternative of a dog sniff instead. The officer deployed the drug-sniffing canine that was in his patrol vehicle; the dog became quite agitated and leapt into the passenger compartment though an open window. The ensuing search uncovered a large package of methamphetamine, weighing about 7500 grams (over 16 pounds), which had been secreted inside the vehicle's spare tire.

In Proposition I, Appellant claims the officer lacked reasonable suspicion to detain him for the purpose of conducting the dog sniff and the ensuing vehicle search. Because Appellant challenged the legality of the search before trial, and renewed his objection during trial, this issue has been preserved for appellate

review. *Hancock v. State*, 2007 OK CR 9, ¶ 114, 155 P.3d 796, 823. The trial court concluded that Appellant consented to a dog sniff of his vehicle. In fact, the video recording of the encounter (offered as an exhibit at trial) shows that Appellant himself suggested the dog sniff while refusing the officer's request to search the vehicle. This exchange was lawful and consensual, as it took place after the officer had handed Appellant his papers and he was free to leave. *State v. Goins*, 2004 OK CR 5, ¶ 13, 84 P.3d 767, 770. The dog's behavior (also reflected in the video) provided probable cause to believe that one of four drugs which the dog was trained to detect was somewhere in the vehicle. *State v. Paul*, 2003 OK CR 1, ¶ 3, 62 P.3d 389, 390; *United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 2644-45, 77 L.Ed.2d 110 (1983). We review the trial court's ruling on a motion to suppress for an abuse of discretion, *see Johnson v. State*, 2012 OK CR 5, ¶ 11, 272 P.3d 720, 726, and find no abuse of discretion here. Proposition I is denied.

As to Proposition II, because Appellant did not complain about the punishment instruction below, we review this claim for plain error, which requires him to show a plain or obvious deviation from a legal rule that affected his substantial rights. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. We find no error, plain or otherwise, here. There is no legal impediment to enhancing a sentence for an offense under the Uniform Controlled Dangerous Substances Act (Title 63) with a prior, non-drug-related offense under the general habitual offender statute (Title 21). *Cooper v. State*, 1991 OK CR 26, ¶ 17, 806 P.2d 1136, 1139. Thus, Appellant's sentence for Aggravated Trafficking was properly enhanced with his prior felony robbery conviction from Tennessee. Furthermore, considering the

CR 19, ¶ 38, 139 P.3d at 923. Nothing about placement on the Methamphetamine Registry has a “calculable effect” on the term of imprisonment to be imposed. *Cf. Reed v. State*, 2016 OK CR 10, ¶¶ 17-18, 373 P.3d 118, 123 (reaching the same result as to Sex Offender Registration when convicted of certain sex offenses). There was no error, plain or otherwise, here. Proposition IV is denied.

In Proposition V, Appellant faults his trial counsel for (1) the manner in which he elicited testimony and argued issues related to the search of the vehicle; (2) failing to object to the punishment instruction on the grounds raised in Proposition II; and (3) failing to request an instruction on the Methamphetamine Offender Registry, raised in Proposition IV. To establish he was denied his constitutional right to reasonably effective assistance of counsel, Appellant must show that counsel made an objectively unreasonable decision which undermines confidence in the outcome of the trial. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984); *Sanchez v. State*, 2009 OK CR 31, ¶ 98, 223 P.3d 980, 1012. While it is true that counsel adopted a motion to suppress that Appellant had filed *pro se*, we discern no prejudice, since the trial court fully considered the claim, and Appellant doesn’t contend that some decisive fact or controlling authority was overlooked.<sup>2</sup> As we have found no merit to Appellant’s substantive complaints about the jury instructions (Propositions II and IV), trial counsel’s failure to raise those complaints below did not result in

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<sup>2</sup> Appellant does take issue with counsel’s concession that he (Appellant) consented to a dog sniff, but the video recording of the traffic stop supports that conclusion. See Proposition I.

prejudice. *Logan v. State*, 2013 OK CR 2, ¶ 11, 293 P.3d 969, 975. Trial counsel was not ineffective. Proposition V is denied.

As to Proposition VI, the jury imposed the maximum prison term and the maximum fine available. We find no evidence or argument that unfairly prejudiced Appellant or distracted the jury from its task. We note as well that the prosecutor did not request a particular sentence. Appellant's criminal history, and the extremely large quantity of methamphetamine in his possession, also support the jury's recommendation. Under the circumstances, the jury's sentence is not shocking to the conscience. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. The trial court's decision to deny Appellant credit for time served was within its discretion, *see Shepard v. State*, 1988 OK CR 97, ¶ 21, 756 P.2d 597, 602, and Appellant does not claim that the court's decision was based on any improper factor. Proposition VI is therefore denied.

Finally, as to Proposition VII, having identified no error in the preceding propositions, there can be no relief for cumulative error. *Sanders v. State*, 2002 OK CR 42, ¶ 17, 60 P.3d 1048, 1051. Proposition VII is denied.

### **DECISION**

The Judgment and Sentence of the District Court of Caddo County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CADDO COUNTY  
THE HONORABLE S. WYATT HILL, ASSOCIATE DISTRICT JUDGE

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