

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTOPHER M. TURNER,)
)
 Appellant,)
 v.)
 STATE OF OKLAHOMA)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2014-580

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 28 2015

SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant Christopher M. Turner was tried by jury and convicted of Indecent or Lewd Acts with a Child under Sixteen (Counts I-IV) (21 O.S.2011, § 1123) in the District Court of Stephens County Case, No. CF-2012-157. The jury recommended punishment of five (5) years imprisonment on Counts I and II and four (4) years imprisonment in Counts III and IV. The trial court sentenced accordingly, ordering the sentences to run consecutively.¹ From this judgment and sentence Appellant has perfected this appeal.

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

- I. The trial court’s policy of running sentences consecutively if a defendant elected to go to jury trial violated the Sixth and Fourteenth amendments to the United States Constitution, Article two, section twenty of the Oklahoma Constitution and 22 O.S.2011, § 976.
- II. The victim compensation assessment must be modified as it exceeds the statutory maximum.

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

III. The district court violated Appellant's due process rights by arbitrarily ordering him to pay a \$2,500 victim compensation assessment on each count without first considering the mandatory statutory factors prerequisite to the assessment.

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 the convictions and sentences should be affirmed but the Victims Compensation Assessment shall be vacated and the case remanded for a full hearing under 21 O.S.2011, § 142.18(A).

In Proposition I, 21 O.S.2011, § 61.1 directs sentences to be served consecutively unless ordered by the trial court otherwise. Whether sentences are to be served consecutively or concurrently is a decision resting in the sound discretion of the trial court. *Kamees v. State*, 1991 OK CR 91, ¶ 21, 815 P.2d 1204, 1208-09. *See also* 22 O.S.2011, § 976. The trial court did not abuse its discretion in imposing consecutive sentences in this case.

In Proposition II, in light of our remand for a new hearing on the Victims Compensation Assessment, it is not necessary to address the merits of this proposition of error.

In Proposition III, we find the trial court abused its discretion in imposing the Victims Compensation Assessment. Title 21 O.S.2011, § 142.18(A) sets forth factors to be considered by the trial court in setting the amount of a crime victim's compensation. *See also Walters v. State*, 1993 OK CR 4, ¶ 15, 848 P.2d 20, 25. Consideration of those listed factors by the trial court in this case is absent from the record. Therefore, the Victims Compensation Assessment is

vacated and the case is remanded to the District Court for a proper hearing in which each of the factors listed in 21 O.S.2011, § 142.18(A) is considered.

DECISION

The Judgments and Sentences are **AFFIRMED**, except for the imposition of the Crime Victims Compensation assessment which is **VACATED AND REMANDED** to the trial court with instructions to conduct a full hearing pursuant to 21 O.S.2011, § 142.18(A). Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF STEPHENS COUNTY
THE HONORABLE G. BRENT RUSSELL, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

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