

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

I. H.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION  
No. J-2015-904

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JAN 29 2016

SUMMARY OPINION

MICHAEL S. RICHIE  
CLERK

**HUDSON, JUDGE:**

The Appellant, I. H., appeals to this Court from an order entered by the Honorable William J. Musseman, District Judge, granting the State's motion to place Appellant in the custody of the Department of Corrections in Case No. YO-2012-43 in the District Court of Tulsa County. On November 6, 2012, Appellant was charged as a youthful offender with one count of Robbery in the First Degree, and one count of Kidnapping. On March 11, 2013, Appellant entered a plea of guilty to the charges and sentencing was passed to allow the Office of Juvenile Affairs ("OJA") to prepare a treatment plan. On March 26, 2013, Judge Musseman convicted Appellant as a youthful offender and sentenced him on each count to concurrent terms of ten years in OJA custody.

On September 16, 2015, the State filed both a motion to sentence Appellant to the Department of Corrections ("DOC"), and a motion to bridge Appellant to the DOC. On September 30, 2015, a hearing on the State's motions was held before Judge Musseman. Judge Musseman found from the

reviews and other information that Appellant's youthful offender treatment had failed. Judge Musseman sentenced Appellant on each count to concurrent terms of seven years custody in DOC, with one year of post-imprisonment DOC supervision.

Appellant asserts three propositions of error in this appeal:

- I. **THE DISTRICT COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT AS AN ADULT ON COUNTS ONE AND TWO BY GRANTING THE STATE'S MOTIONS TO BRIDGE RATHER THAN EXTENDING JURISDICTION TO 18 YEARS AND 5 MONTHS SO THAT APPELLANT COULD COMPLETE THE COMMUNITY PORTION OF THE TREATMENT PROGRAM.**
- II. **THE DISTRICT COURT ABUSED ITS DISCRETION BY IMPOSING ONE YEAR OF POST-IMPRISONMENT SUPERVISION FOLLOWING CONFINEMENT WITH THE DEPARTMENT OF CORRECTIONS SINCE IT CAUSES THE SENTENCE IMPOSED TO EXCEED THE MAXIMUM SENTENCE ALREADY IMPOSED IN THE ORIGINATING SENTENCE.**
- III. **APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE SEPTEMBER 30, 2015 HEARING WHEN COUNSEL FAILED TO OBJECT TO IMPOSITION OF POST-IMPRISONMENT SUPERVISION FOR THE REASONS ALLEGED IN PROPOSITION 2 OF THIS APPLICATION.**

Pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions were presented to this Court in oral argument on January 14, 2016, pursuant to Rule 11.2(E). After hearing oral argument and considering the briefs and record in this case, this Court found that the order of the District Court granting the State's motion to sentence Appellant to the DOC should be **AFFIRMED**.

## ANALYSIS

In Proposition I, Appellant argues that the District Court abused its discretion in sentencing him as an adult by granting the State's motions to bridge rather than extending jurisdiction to eighteen years and five months so that Appellant could complete the community portion of the treatment program. This Court has defined abuse of discretion as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application. *A.R.M. v. State*, 2011 OK CR 25, ¶ 7, 279 P.3d 797 799, *W.C.P. v. State*, 1990 OK CR 24, ¶ 9, 791 P.2d 97, 100. *Accord*, *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946.

The record in this case shows that from the beginning, Appellant's performance under OJA custody was bad. In June of 2015, less than 4 months from his eighteenth birthday, Appellant removed and discarded his ankle monitor, and also ran from his maternal grandmother's vehicle while at a stop light, thus absconding from OJA supervision. There is more than sufficient evidence in this record to show Judge Musseman's decision to place Appellant in the custody of DOC was not an abuse of discretion. The decision granted the State's motion to place Appellant in DOC custody, pursuant to § 2-5-209(B)(1)(b), which does not require detailed findings of fact and conclusions of law.

In Proposition II, Appellant notes that his ten year originating sentence began on March 26, 2013, and thus ends on March 26, 2023. Appellant argues that Judge Musseman's imposition of the seven year sentence plus one year of

post-imprisonment supervision began on September 30, 2015, and thus ends on September 30, 2023, which is beyond the term of the originating sentence.

On September 30, 2015, in accordance with the statutory provision applicable to this case, Judge Musseman “placed [Appellant] in the custody of the Department of Corrections.” 10A O.S.2011, § 2-5-209(B)(1)(b). Appellant does not establish that the DOC will interpret Judge Musseman’s decision in such a way that Appellant’s actual sentence, including one year of post-imprisonment supervision, will extend beyond the end of his originating sentence. Moreover, Appellant was convicted and sentenced in this case on or after November 1, 2012, the date the post-imprisonment statute became effective. 22 O.S.Supp.2012, § 991a-21. Therefore, Appellant has not established that the mandatory provisions of Section 991a-21, requiring post-imprisonment supervision of up to one year, were not included in the term of Appellant’s originating sentence.

Appellant has failed to establish that his arguments in Proposition II resulted in any prejudice. Therefore, his argument in Proposition III that his counsel was ineffective with regard to those arguments is likewise without merit. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d (1984).

This Court finds that the order of the District Court of Tulsa County granting the State’s motion to place Appellant in the custody of the Department of Corrections in Case No. YO-2012-43 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE WILLIAM J. MUSSEMAN, DISTRICT JUDGE

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**OPINION BY:** Hudson, J.  
SMITH, P. J.: CONCUR  
LUMPKIN, V. P. J.: CONCUR  
JOHNSON, J. CONCUR  
LEWIS, J.: CONCUR

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