

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 18 2017

MICHAEL S. RICHIE
CLERK

KASSADY LESITER,

Petitioner,

v.

No. MA 2016-0996

THE HONORABLE THAD BALKMAN,
JUDGE OF THE DISTRICT COURT OF
CLEVELAND COUNTY, THE STATE OF
OKLAHOMA,

Respondent.

ORDER GRANTING EXTRAORDINARY RELIEF
AND REMANDING MATTER TO DISTRICT COURT

On November 2, 2016, Petitioner, by and through counsel Raven S. Sealy, filed an application for this Court to assume original jurisdiction and issue a writ of mandamus in Cleveland County District Court Case No. CF-2014-1158. Petitioner requests this Court compel Respondent to hold a meaningful judicial review hearing which Petitioner argues was requested, ruled upon, and ordered as part of the sentencing terms.

Petitioner entered a plea of guilty, without a plea agreement, on April 27, 2015, to Count 1 – Robbery With a Weapon in Concert With Christopher Banschbach and an Unknown Male and Count 2 – Assault and Battery With a Deadly Weapon in Concert with Christopher Banschbach and an Unknown Male. Petitioner was sentenced to five years on each count, with credit for time served. The sentences were ordered to run concurrently. The Honorable Thad Balkman, District Judge, also recommended a drug treatment program (RTP, DOWC or Keys to Life or equivalent program), ordered nine months post imprisonment

supervision, and set, as a part of the Judgment and Sentence on April 27, 2015, a “one year” review for October 17, 2016, at 2:00 p.m.

At sentencing, counsel for Petitioner requested a one-year judicial review to be included in the Judgment and Sentence and Judge Balkman held that a judicial review after eighteen months of imprisonment would be more appropriate. The review date was included within the Judgment and Sentence. When Petitioner subsequently appeared at the Judicial Review hearing on October 3, 2016, the State alleged Judge Balkman did not have jurisdiction to hear the Judicial Review without the District Attorney’s approval, citing 22 O.S. § 982a(A)(1), because a sentence modification had not taken place within the twelve months following sentencing. Judge Balkman agreed with the State’s argument and found Petitioner was not eligible for judicial review and also denied Petitioner’s motion to withdraw her plea.

Petitioner argues that by ruling upon the application for judicial review and thereby a request for consideration of a sentence modification within the twelve months following sentencing, Judge Balkman was wholly within his statutorily defined power to set and hold a hearing for consideration of a sentence modification within twenty-four months following sentencing. Petitioner contends that the trial court included the judicial review as a term of the sentence, and that in failing to hold a meaningful hearing in consideration of sentence modification, the trial court essentially stripped Petitioner of the lawful terms of her sentence.

In an Order issued November 16, 2016, the Honorable Thad Balkman, District Judge, or his designated representative, was directed to file a response to

the issues raised in Petitioner's application. Thomas J. Sasser and Jennifer P. Austin, Assistant District Attorneys, filed a response in this Court on December 16, 2016, as the designated representatives for Judge Balkman.

The State answers that modification without the District Attorney's consent must occur prior to one year after sentencing. The State also argues that it did not waive the required approval for sentence modification outside one year of sentencing, that it would be unreasonable to hold the State's silence at sentencing, when the one year review was set to be heard in eighteen months, as a waiver in light of the statute requiring affirmative approval by the State.

For a writ of mandamus, Petitioner has the burden of establishing that (1) she has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017).

Title 22 O.S.Supp.2015, § 982a reads, in relevant part, as follows:

- A. 1. Any time within twenty-four (24) months after the initial sentence is imposed or within twenty-four (24) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another sentence be imposed, if the court is satisfied that the best interests of the public will not be jeopardized; provided, however, the court shall not impose a deferred sentence. ***Any application for sentence modification that is filed and ruled upon beyond twelve (12) months of the initial sentence being imposed must be approved by the district attorney who shall provide written notice to any victims in the case which is being considered for modification.*** (Emphasis added.)

The amendments to Section 982a(A)(1) of Title 22, which were made effective November 1, 2015, allows sentence modification by the court imposing sentence any time within twenty-four months after the initial sentence is imposed. The amended statute also requires approval by the District Attorney for any application for sentence modification that "is filed and ruled upon" beyond twelve months of the initial sentence being imposed.


In the present case the request for sentence modification was not filed beyond twelve months. The review was scheduled at the time of sentencing and was made a part of the Judgment and Sentence. The State made no objection to this provision in the Judgment and Sentence. By failing to object, the State essentially agreed to this provision of the Judgment and Sentence. In this case we do not have before us an application for sentence modification that was filed and ruled upon beyond twelve months of the initial sentence being imposed which would require approval by the District Attorney.

Accordingly, Petitioner's application for an extraordinary writ is **GRANTED** and the matter is **REMANDED** to the District Court to hold a "one year review" as set forth in the Judgment and Sentence. The Clerk of this Court is directed to transmit a copy of this order to the Honorable Thad Balkman, as well as the parties.

IT IS SO ORDERED.

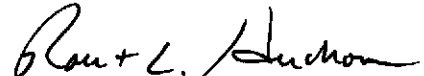
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 18th
day of January, 2017.


GARY L. LUMPKIN, Presiding Judge


DAVID B. LEWIS, Vice Presiding Judge


ARLENE JOHNSON, Judge


CLANCY SMITH, Judge


ROBERT L. HUDSON, Judge

ATTEST:


Clerk

OB