IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RONALD ROGER PHIPPS,	)	**NOT FOR PUBLICATION**
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2000-796
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

JOHNSON, VICE-PRESIDING JUDGE:

Appellant, Ronald Phipps, was convicted by a jury in McClain County District Court, Case No. CF-99-149, of Count 1: Attempt to Manufacture Methamphetamine (63 O.S.Supp.1994, § 2-401(G)); Count 2: Possession of Methamphetamine (Subsequent Offense) (63 O.S.Supp.1995, § 2-402); Count 3: Possession of Marijuana (63 O.S.Supp.1995, § 2-402); and Count 4: Possession of Drug Paraphernalia (63 O.S.1991, § 2-405). The jury recommended sentences as follows: Count 1, twenty years and a $50,000 fine; Count 2, four years; Count 3, $1000 fine; and Count 4, $1000 fine. On June 8, 2000, the Honorable Candace L. Blalock, District Judge, imposed sentence, ordering the prison terms (Counts 1 and 2) to run concurrently, and suspending the two $1000 fines (Counts 3 and 4). Appellant timely filed this appeal.

Appellant raises the following propositions of error:

1. Mr. Phipps' sentence on Count 3 exceeds the statutory range and must be modified.

2. The trial evidence was not sufficient to prove beyond a reasonable doubt that Mr. Phipps was guilty of attempting to manufacture methamphetamine.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that Appellant's fine in Count 3 should be vacated, but that his convictions and sentences should be affirmed in all other respects.

With regard to Proposition 1, we find no statutory authority for imposition of a fine for Possession of Marijuana (63 O.S.Supp.1995, § 2-402(B)(2)). The State's argument that 21 O.S.Supp.1993, § 64(A) authorizes the $1000 fine ignores the fact that punishment provisions from Title 21 generally cannot replace, or be combined with, specific punishment provisions in other Titles of the Oklahoma Statutes. *See* 21 O.S.1991, § 11(A); *Gaines v. State*, 1977 OK CR 259, ¶ 16, 568 P.2d 1290, 1294 (error to combine fine provisions from Controlled Substances Act with incarceration range in 21 O.S. § 51); *Brown v. State*, 1976 OK CR 48, ¶ 12, 546 P.2d 1023, 1026 (catch-all punishment provision in Title 47 controlled over catch-all provision in Title 21).

Furthermore, the "catch-all" punishment provision (jail time and fine) found in 63 O.S.1991, § 2-411 is inapplicable, as it only applies when an offense in the Uniform Controlled Substances Act provides for no punishment

whatsoever. The provision at issue here designates a specific punishment; it simply does not include a fine. This Court cannot ignore the plain meaning of a statute, or add language that is clearly not intended to be there. *Arnold v. State*, 48 Okl.Cr. 452, 132 P. 1123, 1126 (1913), *overruled on other grounds, Lenzy v. State*, 1993 OK CR 53, 864 P.2d 847.

With regard to Proposition 2, we find the evidence presented at trial was sufficient for a rational juror to conclude that Appellant participated in the attempt to manufacture methamphetamine. *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202. The lab equipment and chemicals were found at a residence Appellant shared with his wife. Methamphetamine was found inside the bedroom where Appellant slept. Appellant's fingerprints were found on two jars containing ephedrine which were in close proximity to the other lab paraphernalia. *McGlumphy v. State*, 1975 OK CR 137, ¶ 11, 538 P.2d 1097, 1100 (fingerprints constitute circumstantial evidence of possession). Although Appellant disclaimed any knowledge of the lab and offered an innocent explanation for how his fingerprints got on the jars, the jury was in a better position to evaluate the credibility of this account, and its credibility choices will not be disturbed on appeal. *Bland v. State*, 2000 OK CR 11, ¶ 24, 4 P.3d 702, 713.

DECISION

The $1000 fine imposed in Count 3 is **VACATED.** In all other respects, the Judgment and Sentence of the district court is **AFFIRMED.**

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OPINION BY JOHNSON, V.P.J.
LUMPKIN, P.J.: CONCUR IN PART/DISSENT IN PART
CHAPEL, J.: CONCUR
STRUBHAR, J.: CONCUR
LILE, J.: JOINS IN LUMPKIN'S CONCUR IN PART/DISSENT IN PART

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LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgments and sentences in Counts 1, 2 and 4 of CF-99-149. However, I find the Court misreads our prior cases and fails to apply the clear statutory language of 21 O.S.Supp.1993, § 64(A), in vacating the fine assessed in Count 3.

The provisions of 63 O.S.Supp.1995, § 2-402(B)(2), does not provide a fine for simple possession of marihuana. Title 21, Supp.1993, § 64(A), states "upon a conviction for **any** misdemeanor punishable by imprisonment in any jail, in relation to which no fine is prescribed by law, the court or jury may impose a fine on the offender not exceeding One Thousand Dollars ($1,000.00) in addition to the imprisonment prescribed." Simple possession of marihuana is the same as "any misdemeanor" covered under Section 64(A). Therefore, the assessment of a fine is appropriate.

The Court mixes apples with oranges when it uses cases from this Court which prohibited use of the general habitual criminal enhancements of 21 O.S.1991, § 51, when a specific enhancement under Title 63 existed. That is not the case here. Just as an individual charged with Sale of a Controlled Dangerous Substance, who had been previously convicted of Robbery with Firearms, could upon the conviction for the sale of drugs have his punishment enhanced under 21 O.S.1991, § 51, so can the Appellant in this case be assessed a fine under 21 O.S.Supp.1993, § 64(A).

I am authorized to state Judge Lile joins in this special vote.