**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

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| **NEHEMIAH MARTIN HELLEMS,** <br> **Appellant,** <br> **-vs.-** <br> **THE STATE OF OKLAHOMA,** <br> **Appellee.** | **No. F-2005-784** | FILED <br> IN COURT OF CRIMINAL APPEALS <br> STATE OF OKLAHOMA <br> APR 23 2007 <br> MICHAEL S. RICHIE <br> CLERK |

**ORDER AFFIRMING ACCELERATION OF DEFERRED SENTENCING**

In the District Court of Bryan County, Appellant entered pleas of "no contest" in Case Nos. CF-2001-37 and CF-2002-303. In CF-2001-37, Appellant pled to the offense of Knowingly Concealing Stolen Property in violation of 21 O.S.Supp.2000, § 1713. In Case CF-2002-303 Appellant pled to the offense of False Declaration of Ownership to Pawnbroker in violation of 59 O.S.2001, § 1512(B)(2). Upon accepting Appellant's no contest pleas, the Honorable Farrell M. Hatch, District Judge, on December 10, 2002, ordered sentencing deferred for a period of three (3) years, conditioned upon written terms of probation.

On June 21, 2005, the State filed a "Motion to Accelerate Deferred Judgment" in each of Appellant's cases. The motions alleged Appellant violated his probation on May 20, 2005, by committing the offense of Assault and Battery with a Deadly Weapon as alleged in Bryan County District Court, Case No. CF-2005-422. An evidentiary hearing was conducted upon the State's motions before the Honorable Trace Sherrill, Special Judge. At the conclusion of the hearing, Judge Sherrill, found Appellant had violated the rules and conditions of probation and that his judgment and sentencing should be accelerated. (A. Tr. 27-28.) Thereupon, the District Court, on August 1, 2005,

found Appellant guilty of Knowingly Concealing Stolen Property in CF-2001-37 and False Declaration of Ownership to Pawnbroker in CF-2002-303 and sentenced Appellant to concurrent terms of five (5) years imprisonment upon those offenses, but suspended execution of the last three (3) years of each term. (A. Tr. 28, O.R. I 45, O.R. II 22.)

From the acceleration order, Appellant brings this appeal and raises one proposition of error:

Proposition

> The District Court's acceleration of Mr. Hellems' deferred sentence was excessive under the facts of this case and should be reversed or favorably modified.

The Court **FINDS** that the acceleration order must be affirmed, as Appellant's proposition of error does not raise issues that can be considered within the context of an acceleration appeal.

Appellant's proposition argues that the District Court's decision to impose sentences of five years imprisonment was excessive and must be modified. His proposition does not contend that there was insufficient evidence to find a violation of probation or that the violation of probation committed by Appellant did not warrant acceleration of sentencing. Appellant's proposition of error only takes issue with the sentences imposed by the District Court, urging that they are excessive under the facts and circumstances of Appellant's case and should shock the conscience.

An outline of what occurs when a trial court defers sentencing and then subsequently enters a final order accelerating that sentencing reveals why Appellant's proposition of error does not address any issues bearing upon that order he has appealed. When a trial court enters a "deferred sentence," the result is that no judgment of guilt or sentence is being entered at that time.

Instead, there is only an order that "defer[s] further proceedings upon the specific conditions prescribed by the court not to exceed a five-year period." 22 O.S.Supp.2002, § 991c(A).[1] If the conditions are violated, the State may then move to accelerate the date of sentencing. If the State so moves, the trial court must then determine by a preponderance of the evidence if the conditions were violated as alleged and if the violation justifies acceleration of judgment and sentence.[2] If the trial court finds acceleration to be warranted and orders acceleration of the sentencing, that concludes all matters at issue upon the motion to accelerate, and any appeal of that final order of acceleration is limited to a review of the acceleration order's validity.[3] The judgment of guilt and the sentence imposed (both of which by necessity are matters that only occur after a trial court has made its decision to accelerate sentencing) are not themselves before the Court in a regular acceleration appeal.[4]

The Legislature has not given this Court authority to review convictions that follow a plea of guilty or nolo contendere except by petition for writ of certiorari. 22 O.S.2001, § 1051(a). Consequently, because Appellant has not filed a petition for writ of certiorari, the Court's review in this appeal is limited

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[1] We cite to the statute in effect at the time when the District Court ordered sentencing deferred.

[2] *See Hunter v. State,* 1982 OK CR 133, ¶ 2, 650 P.2d 871, 872 ("Before a trial court may accelerate a deferred sentence, the State must prove by a preponderance of the evidence that one of the conditions of probation has been violated.").

[3] Rule 1.2(D)(5)(b), *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18, App. (2007) (rule establishing appeal procedures from acceleration proceedings and declaring that "[t]he scope of review will be limited to the validity of the acceleration order").

[4] *See* Rule 1.2(D)(5)(c) (requiring defendants who wish to appeal their judgment and sentence "[i]n addition to appealing the validity of the acceleration order . . . shall appeal by certiorari pursuant to Section IV of these Rules as a part of the appeal of the validity of the acceleration order." *Cf.* Rule 1.2(D)(4) (establishing method of appeal from an order revoking suspended sentence, and providing that "the scope of review is limited to the validity of the revocation order" and that "[t]he validity of the predicate conviction can only be appealed through a separate appeal pursuant to the regular felony and misdemeanor procedures").

to the validity of the acceleration order, and the appropriateness of the sentences imposed cannot be implicated through the current appellate action.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the August 1, 2005, final order accelerating Appellant's deferred sentencing in Bryan County District Court, Case Nos. CF-2001-37 and CF-2002-303, is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 23rd day of April, 2007.

**GARY L. LUMPKIN, Presiding Judge**

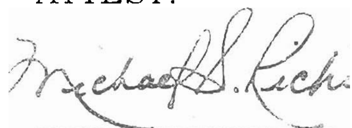
**CHARLES A. JOHNSON, Vice Presiding Judge**

**CHARLES S. CHAPEL, Judge**

**ARLENE JOHNSON, Judge**

**DAVID B. LEWIS, Judge**

ATTEST:



Clerk

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