

Robert Daniel SMITH v. STATE of Arkansas

CR 74-159

520 S.W. 2d 301

Opinion delivered March 10, 1975

1. CRIMINAL LAW — PRETRIAL JAIL TIME, DENIAL OF CREDIT FOR — CONSTITUTIONALITY. — Denial of credit for pretrial jail time solely because of a defendant's indigency amounts to an unconstitutional discrimination based on wealth, absent some compelling government interest.
2. CRIMINAL LAW — VALIDITY OF TRIAL COURT'S ACTION — REVIEW. — When the record shows that a defendant was not given the right of allocution prior to sentencing, the Supreme Court cannot indulge in the presumption that the trial court performed its duty according to law, or exercised its discretion pursuant to Ark. Stat. Ann. § 43-2813 (Supp. 1973), in denying jail time.

Appeal from Pulaski Circuit Court, First Division, *William J. Kirby*, Judge; reversed and remanded.

*Harold L. Hall*, Public Defender, by: *Robert L. Lowery*, Dep. Public Defender, for appellant.

*Jim Guy Tucker*, Atty. Gen., by: *Robert A. Newcomb*, Asst. Atty. Gen., for appellee.

CONLEY BYRD, Justice. The sole issue on this appeal is whether appellant Robert Daniel Smith, an indigent, is entitled to credit for jail time served by him prior to conviction.

The record shows that appellant was held in custody from December 8, 1973, until the date of his trial before the court on January 11, 1974. The record also shows that appellant was sentenced and committed to the penitentiary for 15 years upon a charge of robbery with a firearm without

being given the opportunity to show why he should not receive the full 15 year sentence.

Thus unlike *Coleman v. State*, 257 Ark. 538 518 S.W. 2d 487 (1975), the record shows appellant was not given the right of allocution and consequently, we cannot indulge in the presumption that the trial court did its duty according to law or that it exercised its discretion pursuant to Ark. Stat. Ann. § 43-2813 (Supp. 1973), in denying jail time, *Shelton v. State*, 255 Ark. 932, 504 S.W. 2d 348 (1974). Consequently, this case seems to be controlled by *Smith v. State*, 256 Ark. 425, 508 S.W. 2d 54 (1974), where we pointed out that the denial of jail time solely because of the indigency of the defendant amounts to an unconstitutional discrimination based on wealth, absent some "compelling government interest."

Reversed and remanded with directions to give credit for jail time.

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