

IN THE COURT OF APPEALS 02/25/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01064 COA

WILLIAM MICHAEL ADAIR A/K/A

WILLIAM MIKE ADAIR A/K/A MIKE ADAIR

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GEORGE READY

COURT FROM WHICH APPEALED: TATE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CLAUDE M. PURVIS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY KLINGFUSS

DISTRICT ATTORNEY: DAVID ADAMS

NATURE OF THE CASE: CRIMINAL: RUNNING STOP SIGN AND DISORDERLY
CONDUCT

TRIAL COURT DISPOSITION: CONVICTED OF RUNNING A STOP SIGN, 1 COUNT OF
RESISTING ARREST AND DISORDERLY CONDUCT

BEFORE BRIDGES, C.J., DIAZ, AND KING, JJ.

DIAZ, J. FOR THE COURT:

William Michael Adair (Adair) was convicted of resisting arrest, disorderly conduct, and failure to follow request of a law enforcement officer. Adair was required to pay a fine of \$500.50 plus court costs, and additionally, he was sentenced to serve ten (10) days in the Tate County Jail. Aggrieved, he appeals to this Court asserting that the lower court erred in refusing to empanel a jury, and (2) that the evidence was not sufficient to support his convictions. Finding no reversible error, we affirm.

FACTS

On April 17, 1994, Adair and his sons were heading home from church in Adair's vehicle. Officer Shawn Corley of the Senatobia Police Department was sitting by an intersection when Adair drove through a stop sign without stopping. Officer Corley proceeded to pull Adair over to the side of the road. Officer Corley met Adair between the patrol car and Adair's vehicle. An argument ensued and Adair put his driver's license on the hood of Officer Corley's patrol car, and then proceeded to drive home. Officer Corley subsequently went to Adair's home and arrested Adair.

DISCUSSION

RIGHT TO JURY

Adair was charged with running a stop sign, two counts of resisting arrest, and one count of disorderly conduct, reckless driving, and disturbing the peace. The latter two charges were dismissed, and the charge of running a stop sign does not carry any possible jail sentence. Resisting arrest and disorderly conduct, however, each carry a maximum possible jail sentence of six months. Faced with a maximum possible term of eighteen months in jail, Adair argues that he was entitled to a jury trial. In the proceedings below, the trial judge stated at the onset that Adair would not be sentenced to more than six months imprisonment if found guilty; therefore, a jury would not be empaneled.

This exact issue has been recently addressed by the U.S. Supreme Court in *Lewis v. U.S.*, 116 S. Ct. 2163 (1996). In *Lewis*, the Supreme Court held that a defendant who was charged with a "petty" offense was not entitled to a jury trial, even though he was charged with multiple counts in a single proceeding so that the aggregate prison term he faced, if found guilty, exceeded six months. *Lewis*, 116 S.Ct. at 2164. The Court stated that the Sixth Amendment guarantee of a right to a jury trial does not extend to "petty" offenses. This does not change where a defendant faces a potential aggregate term in excess of six months. *Id.*

In determining whether an offense is petty, we look to the maximum penalty attached to the offense. "It is now settled that a legislature's determination that an offense carries a maximum prison term of six months or less indicates its view that an offense is 'petty'." *Id.* at 1267. Although the aggregate potential prison term Adair faced in the present case was eighteen-months, he was not entitled to a jury trial. "The Sixth Amendment reserves the jury-trial right to defendants accused of serious crimes." *Id.* The mere fact that Adair was charged with several petty offenses does not change the

legislative intent as to the gravity of the particular offenses, nor does it convert the petty offense into a serious one, to which the right to a jury trial would be applicable. *Id.* Adair was not entitled to a jury trial.

SUFFICIENCY OF THE EVIDENCE

Adair also argues that the evidence did not support his convictions of disorderly conduct and failure to stop at a stop sign. In his argument, Adair argues that the overwhelming weight of the evidence shows that he did stop at the stop sign, and that the record is lacking of any evidence supporting his disorderly conduct conviction.

Our standard of review of the findings of a trial judge sitting without a jury is that we will reverse only where the findings of the trial judge are manifestly erroneous or clearly wrong. *Amerson v. State*, 648 So. 2d 58, 60 (Miss. 1994). It is well settled that when the trial judge sits as a fact-finder, his findings will not be disturbed unless manifestly wrong. *Walker v. State*, 671 So. 2d 581, 628 (Miss. 1995).

Based on the testimony, the lower court found that Adair was guilty of running the stop sign,

disorderly conduct, and resisting arrest. A review of the record reveals no manifest error. Therefore, we affirm the judgment of the lower court.

THE JUDGMENT OF CONVICTION IN THE TATE COUNTY CIRCUIT COURT OF RUNNING A STOP SIGN, RESISTING ARREST AND DISORDERLY CONDUCT AND SENTENCE OF TEN (10) DAYS IN THE TATE COUNTY JAIL AND FINE OF \$500.50 IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., BARBER, COLEMAN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

HERRING, J., NOT PARTICIPATING.