IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ANTHONY DEAN WILKERSON, JR.,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
	)	**No. F-2017-1176**
v.	)	
STATE OF OKLAHOMA,	)	
Appellee.	)	

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Anthony Dean Wilkerson, Jr., was convicted by a jury of seven counts of Child Sexual Abuse, in violation of 21 O.S.Supp.2014, § 843.5(E) in the District Court of Canadian County, Case No. CF-2016-407. The jury recommended a sentence of twenty-five years imprisonment each on Counts 1 and 4; fifteen years imprisonment on Count 3; and life imprisonment each on Counts 2, 5, 6 and 7. The Honorable Timothy Henderson, District Judge, presided at trial[1] and sentenced Appellant in accordance with the

[1] The Honorable Paul Hesse, Canadian County District Judge, recused from this matter on September 21, 2017. Judge Henderson, an Oklahoma County District Judge, was thereafter assigned to try the case commencing on October 2, 2017.

jury's verdicts, ordered credit for time served and imposed various costs and fees. Judge Henderson further ordered Appellant's sentences to run consecutively.[2] Wilkerson now appeals.

Appellant alleges the following propositions of error on appeal:

I. APPELLANT'S CONVICTIONS CONSTITUTE A VIOLATION OF THE STATE'S PROHIBITION AGAINST DOUBLE PUNISHMENT;

II. THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S OBJECTION TO A LEADING QUESTION DURING J.W.'S TESTIMONY;

III. THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO ASK LEADING QUESTIONS DURING DIRECT EXAMINATION OF J.W.;

IV. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ORDERED APPELLANT'S SENTENCES TO RUN CONSECUTIVE;

V. APPELLANT RECEIVED AN EXCESSIVE SENTENCE WHICH SHOULD BE FAVORABLY MODIFIED;

VI. APPELLANT'S SENTENCE SHOULD BE MODIFIED THROUGH VACATING THE FINES ORDERED; and

VII. THE CUMULATIVE EFFECT OF ALL THESE ERRORS DEPRIVED APPELLANT OF A FAIR AND IMPARTIAL TRIAL.

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[2] Wilkerson must serve 85% of his sentences before becoming eligible for parole. 21 O.S.Supp.2015, § 13.1.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**. However, we **REMAND** the matter for the district court to correct the judgment and sentence document as discussed *infra*.

Proposition I. Appellant did not object at trial on grounds of double punishment. *See* 21 O.S.2011, § 11(A). Our review is thus limited to plain error. *Bivens v. State*, 2018 OK CR 33, ¶ 11, 431 P.3d 985, 992. To be entitled to relief under the plain error doctrine, Appellant must show an actual error, which is plain or obvious, and which affects his substantial rights. *Baird v. State*, 2017 OK CR 16, ¶ 25, 400 P.3d 875, 883; *Levering v. State*, 2013 OK CR 19, ¶ 6, 315 P.3d 392, 395; 20 O.S.2011, § 3001.1. This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Baird*, 2017 OK CR 16, ¶ 25, 400 P.3d at 883; *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

Appellant fails to show actual or obvious error. The focus of the multiple punishment analysis under our case law is the relationship between the crimes:

> If the crimes truly arise out of one act . . . then Section 11 prohibits prosecution for more than one crime. One act that violates two criminal provisions cannot be punished twice, absent specific legislative intent. This analysis does not bar the charging and conviction of separate crimes which may only tangentially relate to one or more crimes committed during a continuing course of conduct.

Davis v. State, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126-27 (footnotes omitted). *Accord Sanders v. State*, 2015 OK CR 11, ¶ 6, 358 P.3d 280, 283.

"Where there is a series of separate and distinct crimes, . . . Section 11 is not violated." *Logsdon v. State*, 2010 OK CR 7, ¶ 17, 231 P.3d 1156, 1165 (citing *Davis*, 1999 OK CR 48, ¶ 12, 993 P.2d at 126). Separate sexual acts constitute separate offenses, even where they occurred close in time to one another. *See, e.g., Riley v. State*, 1997 OK CR 51, ¶ 13, 947 P.2d 530, 533. In the present case, J.W. testified to multiple incidents of each sex act alleged in the information spanning a period of several years. J.W. further described in her testimony how each separate sex act alleged in the

seven counts of the information occurred at every residence where she had lived with Appellant and her mother. The sex acts alleged in the various counts are separate and distinct offenses requiring dissimilar proof even if assuming *arguendo* they occurred in rapid succession within the same episode. Under these circumstances, there was no double punishment violation and thus no error plain or otherwise. *See Davis v. State*, 2018 OK CR 7, ¶ 5, 419 P.3d 271, 276. Proposition I is denied.

Proposition II. The record shows that the prosecutor used a leading question to spark J.W.'s memory and aid in the appropriate development of J.W.'s testimony concerning the many sex acts inflicted upon her by Appellant. This was wholly appropriate considering the awkward subject matter of J.W.'s testimony; the sheer volume of sex acts J.W. reported suffering; and her earlier testimony that she was nervous being in the same room with Appellant. "The court in its discretion may permit leading questions by the State." *Cooper v. State*, 1983 OK CR 154, ¶ 10, 671 P.2d 1168, 1173. The trial court did not abuse its discretion in allowing the leading question here. 12 O.S.2011, § 2611(D); *Powell v. State*, 2000 OK CR 5, ¶ 79, 995 P.2d 510, 529 ("[l]eading questions are . . .

commonly used to develop the testimony of children or persons with limited understanding of the information sought" and "to revive the recollections of a witness."). Proposition II is denied.

Proposition III. The questions identified as leading in this proposition of error drew no objection at trial. Our review is thus limited to plain error. Appellant fails to show actual or obvious error with this claim. The challenged questions here were proper follow-up questions to J.W.'s immediately preceding testimony. There is no error, plain or otherwise, stemming from the challenged questions and the resulting answers. Proposition III is denied.

Propositions IV and V. "This Court will not modify a sentence within the statutory range unless, considering all the facts and circumstances, it shocks the conscience." *Baird*, 2017 OK CR 16, ¶ 40, 400 P.3d at 886; *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. In judging whether a defendant's sentence is excessive, we do *not* conduct a proportionality review on appeal. *Rea*, 2001 OK CR 28, ¶ 5, 34 P.3d at 149. Further, "[t]his Court reviews a trial court's decision to run a defendant's sentences consecutively or concurrently for an abuse of discretion." *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. Appellant fails to show either that the sentences

imposed shock the conscience and thus were excessive or that the trial court's decision to run Appellant's sentences consecutively was an abuse of discretion. Propositions IV and V are denied.

Proposition VI. Because the trial court did not orally pronounce a fine as any part of Appellant's sentence at formal sentencing, its inclusion in the written judgment and sentence document was an obvious scrivener's error. *See LeMay v. Rahhal,* 1996 OK CR 21, ¶ 18, 917 P.2d 18, 22 (oral pronouncement of sentence controls over conflicting written orders). Upon remand, the district court is directed to enter an order nunc pro tunc correcting the Judgment and Sentence document to accurately reflect that no fine was imposed. *Neloms,* 2012 OK CR 7, ¶ 44, 274 P.3d at 172. Relief for Proposition VI is granted for this limited purpose.

Proposition VII. We deny Appellant's cumulative error claim because we have found no substantive errors on appeal that affected Appellant's trial rights. *Tafolla v. State,* 2019 OK CR 15, ¶ 45, __P.3d__. Proposition VII is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. This matter is **REMANDED** to the district court with instructions to

enter an order nunc pro tunc correcting the Judgment and Sentence document in conformity with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE TIMOTHY HENDERSON, DISTRICT JUDGE

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LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCUR IN RESULTS
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR