

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DONTAE SHALON DANIELS,)
)
 Appellant,)
)
 v.) **Case No. F-2014-151**
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 10 2015

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant, Dontae Shalon Daniels, was convicted by a jury in Oklahoma County District Court, Case No. CF-2012-4796, of Failure to Comply with Sex Offenders Registration Requirements (57 O.S.2011, § 587). On February 7, 2014, the Honorable Kenneth C. Watson, District Judge, sentenced him to five years imprisonment, in accordance with the jury's recommendation. This appeal followed.

Daniels raises five propositions of error in support of his appeal:

PROPOSITION I. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION FOR FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION.

PROPOSITION II. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE STATE TO INTRODUCE IRRELEVANT, PREJUDICIAL, CONFUSING AND MISLEADING EVIDENCE OF ALL FOURTEEN COUNTS OF MR. DANIELS'S PRIOR CONVICTION.

PROPOSITION III. THE TRIAL COURT ERRED BY ALLOWING THE STATE TO USE THE SAME PRIOR FELONY AS BOTH AN ELEMENT OF THE OFFENSE AND AS A PUNISHMENT ENHANCER IN VIOLATION OF *CHAPPLE V. STATE*.

PROPOSITION IV. THE TRIAL COURT FAILED TO PROPERLY INSTRUCT MR. DANIELS'S JURY DURING THE SECOND STAGE OF TRIAL.

PROPOSITION V. TRIAL ERRORS, CONSIDERED IN A CUMULATIVE FASHION, WARRANT A NEW TRIAL.

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 affirm. As to Proposition I the State presented uncontroverted testimony that Appellant, a convicted sex offender, was advised of his duty to maintain periodic contact with authorities, pursuant to the Sex Offenders Registration Act, and that he failed to do so for over a year. The evidence is sufficient to support the jury's verdict. *Wood v. State*, 2007 OK CR 17, ¶ 8, 158 P.3d 467, 472; *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); OUJI-CR (2nd) No. 3-40. Proposition I is denied.

As to Proposition II, we need not decide whether the trial court erred in admitting all fourteen of Appellant's prior convictions for sex crimes (over defense objection) in the guilt stage of trial. The evidence that Appellant had failed to register was straightforward and refuted. Any possible error here was harmless beyond a reasonable doubt. *Barnard v. State*, 2012 OK CR 15, ¶ 14, 290 P.3d 759, 764; *Chapman v. California*, 386 U.S. 18, 23-24, 87 S.Ct. 824, 827-828, 17 L.Ed.2d 705 (1967). Proposition II is denied.

As to Proposition III, the State's evidence showed that in August 2008, Appellant was convicted of fourteen counts of crimes involving child sexual abuse in one case, and one count of Assault & Battery on a Police Officer in another. As noted in Proposition II, the State presented the sex-crime convictions in the guilt stage of trial. It then presented both Judgment and Sentence documents in the punishment stage of trial. However, the trial court

instructed the jury only on the punishment range applicable to a person convicted of the instant crime after conviction of *one* prior felony (*i.e.*, not more than ten years imprisonment). 57 O.S.2011, § 587; 21 O.S.2011, § 51.1(A)(3). Appellant did not object to the re-use of the sex-crime Judgment and Sentence in the punishment stage, so we review only for plain error. To be entitled to relief under the plain error doctrine, Appellant must show an obvious and actual error (a deviation from a legal rule) which affected his substantial rights and hence the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. Error did occur; a prior conviction may be used to supply an element of the charged offense, or to enhance punishment for that offense, but not both. *See Chapple v. State*, 1993 OK CR 38, ¶¶ 14, 17, 866 P.2d 1213, 1216, 1217. Still, the error was harmless beyond a reasonable doubt. Already aware (from the guilt stage) that Appellant had fourteen sex-crime convictions, the jury, presented with his additional criminal history, only sentenced him to the mid-range for a person with one prior felony conviction.¹ *Owens v. State*, 1983 OK CR 85, ¶ 5, 665 P.2d 832, 835. Proposition III is denied.

¹ Appellant assumes that his sex-crime Judgment and Sentence could only be treated as a single conviction, regardless of the number of counts. This appears to have been the trial court's justification for allowing the entire Judgment and Sentence in the guilt stage of the trial. It is true that for purposes of general sentence enhancement, prior convictions are counted as one when they arise from "the same transaction or occurrence or series of events closely related in time and location." 21 O.S.2011, § 51.1(B). However, it is the defendant's obligation to come forward with some evidence that the prior offenses meet this test. *See Levering v. State*, 2013 OK CR 19, ¶ 7 n.3, 315 P.3d 392, 395 n.3, and cases cited therein. The record here contains no such evidence. Had the trial court allowed only one of Appellant's fourteen sex crimes in the guilt stage, the rest would have been available for sentence enhancement, and increased his potential sentence to life in prison. 21 O.S.2011, § 51.1(B).

As to Proposition IV, Appellant did not object to the trial court's punishment-stage instructions, so we review only for plain error. *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923. Unless the defendant's criminal history is admitted in his own testimony or by stipulation, the jury, as fact-finder, may reject any or all evidence on the subject offered by the State in the punishment stage. The instructions in this case did not give the jury the option of sentencing Appellant as if he had no prior felony convictions. See OUJI-CR (2nd) Nos. 10-19 to 10-22. While this was error, it was harmless beyond a reasonable doubt. Given Appellant's undisputed criminal history, no rational juror could possibly have concluded that he had no prior felony convictions for purposes of sentencing. *Fogle v. State*, 1985 OK CR 50, ¶¶ 11-15, 700 P.2d 208, 211-12. Proposition IV is denied.

As to Proposition V, while some errors have been identified in Appellant's trial, we have found each to be harmless on independent grounds, and there is no error to accumulate. *Logsdon v. State*, 2010 OK CR 7, ¶ 42, 231 P.3d 1156, 1170. Proposition V is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE KENNETH C. WATSON, DISTRICT JUDGE

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OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
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