IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOHNNY CANNON SUMNER,		
Appellant,) NOT FOR PUBLICATION	
v.	Case No.	F-2014-1080
THE STATE OF OKLAHOMA,)) }	,IN COURT OF CRIMINAL APPEALS STATE OF OKLAHOMA
Appellee.	ý	STATE OF OKLAHOMA JAN - 6 2016
SIMMARY OPINION		

SUMMARY OF INTOIN

LUMPKIN, VICE PRESIDING JUDGE:

MICHAEL S. RICHIE CLERK

Appellant, Johnny Cannon Sumner, was tried by jury and convicted of Child Sexual Abuse (Count 2) (21 O.S.2011, § 843.5) in District Court of McIntosh County, Case Number CF-2013-181.1 The jury recommended as punishment imprisonment for twenty-five (25) years and a fine in the amount of \$5,000.00. The trial court sentenced Appellant accordingly but suspended payment of the fine.2 It is from this judgment and sentence that Appellant appeals.

Appellant raises the following proposition of error in this appeal:

The trial court erred in allowing the State to refile the same Ĭ. charges against the Appellant after the case was dismissed at preliminary hearing.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts and briefs of the

¹ The jury acquitted Appellant as to the offense of Forcible Sodomy (21 O.S.2011, § 888) in Count 1.

² Any person convicted of Child Sexual Abuse in violation of 21 O.S.2011, § 843.5 shall be required to serve 85% of any sentence of imprisonment prior to becoming eligible for consideration for parole. 21 O.S.2011, § 13.1.

parties, we have determined that neither reversal nor modification of sentence is warranted under the law and the evidence.

In his sole proposition of error, Appellant contends that the District Court erred when it permitted the State to refile the charges after the case was dismissed at preliminary hearing. He argues that pursuant to *Jones v. State*, 1971 OK CR 27, 481 P.2d 169, the State is required to show either newly discovered evidence or good cause to justify the refiling of charges following dismissal at preliminary hearing. As the magistrate did not discharge Appellant based upon an adverse ruling on the merits, we find that the circumstances of the present case are distinguishable from *Jones. Reynolds v. State*, 1987 OK CR 56, ¶¶ 3-4, 735 P.2d 564, 565; *Blades v. State*, 1979 OK CR 147, ¶ 31, 619 P.2d 875, 881; *Lampe v. State*, 1975 OK CR 166, ¶¶ 11-12, 540 P.3d 590, 594-95.

Appellant further asserts that pursuant to 22 O.S.2011, § 812.2(C) the case could not be refiled unless the state showed newly discovered evidence. However, the magistrate did not dismiss the case based upon a violation of the time limit to begin trial set out in 22 O.S.2011, § 812.1. Therefore, we find that the provisions of § 812.2(C) were not applicable to Appellant's case.

Since the magistrate dismissed the case because the State was not ready to proceed, the dismissal did not bar the refiling of the charges. 22 O.S.2011, § 817. The State was not required to show additional evidence or prove the existence of other good cause to properly refile the charges. *Lampe*, 1975 OK CR 166, ¶¶ 11-12, 540 P.3d at 594-95. Appellant has not shown that error occurred.

Within this proposition of error, Appellant argues that the State violated his right to a fast and speedy trial as guaranteed by both the Constitution of the United States and the Constitution of the State of Oklahoma. It appears that Appellant simply intended this argument to serve the purpose of establishing prejudice. We note that Petitioner did not set out this claim as a separate proposition of error in his brief, failed to support the claim with citations to the record, and did not cite any authority in support of this argument. Therefore, to the extent that Appellant's argument could be interpreted as a claim of error, we find the issue is waived pursuant to Rule 3.5(A)(5), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2015); Murphy v. State, 2012 OK CR 8, ¶ 23, 281 P.3d 1283, 1291 (refusing to review contention not supported with argument or authority as required by Rule 3.5); Harmon v. State, 2011 OK CR 6, ¶ 90, 248 P.3d 918, 946 (finding issue waived under Rule 3.5 where appellant provides no argument or authority); Armstrong v. State, 1991 OK CR 34, 811 P.2d 593, 599 (finding issue waived where under Rule 3.5 where appellant failed to provide citation to record).

Accordingly, this appeal is denied.

DECISION

The Judgment and Sentence of the District Court is hereby **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 MCINTOSH COUNTY THE HONORABLE JAMES R. PRATT, ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

CINDY M. DAWSON ATTORNEY AT LAW 205 WEST FOLEY EUFAULA, OK 74432

and

CARMAN RAINBOLT ATTORNEY AT LAW 100 SOUTHWEST FIRST CHECOTAH, OK 74426 COUNSEL FOR DEFENDANT

CAROL ISKI GREGORY R. STIDHAM ASSISTANT DISTRICT ATTORNEYS P.O. BOX 127 EUFAULA, OK 74432 COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

BILLY D. VANDEVER ATTORNEY AT LAW P.O. BOX 144 PAULS VALLEY, OK 73075 COUNSEL FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
KEELEY L. MILLER
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: Concur JOHNSON, J.: Concur LEWIS, J.: Concur HUDSON, J.: Concur