

evidence, and sustained the State's application. Judgment and Sentence was entered and Appellant was sentenced to seven years imprisonment.

Appellant appeals from the acceleration of his deferred sentence. On appeal he raises the following proposition of error:

The trial court abused its discretion in accelerating Appellant to seven years in the Department of Corrections because the State of Oklahoma did not present any evidence in support of acceleration (i.e., it did not introduce the Preliminary Hearing Transcript from CF-2014-220) at the August 25, 2014, Acceleration Hearing.

We find reversal is not required and affirm the acceleration of Appellant's deferred sentence.

Appellant argues that "[e]ven though it was clear from the record at the acceleration hearing that the District Court did review the preliminary hearing transcript in which Appellant was bound over and entertained extensive argument regarding the facts that came out during the preliminary hearing, no actual evidence (i.e., in the form of the actual transcript) was admitted during this proceeding." The State answers that Appellant does not contest the sufficiency of the evidence contained within the preliminary hearing transcript, the fact that the trial judge reviewed the transcript, or that the use of a preliminary hearing transcript is proper, but that Appellant only argues that the transcript was not formally introduced on the record.

At the July 10, 2014, plea hearing on the application to accelerate, counsel for Appellant offered to waive the twenty-day rule for time to review the preliminary hearing transcript for the new case. The State said they would submit the transcript for the trial judge to review for purposes of the acceleration

hearing. No objection was made. At the August 25, 2014, acceleration hearing, Judge Barcus stated that the basis of the application was the new case in CF-2014-220 and that he had read the preliminary hearing transcript.

Because Appellant made no objection to the acceleration proceeding, we review for plain error. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907. To be entitled to relief under the plain error doctrine, Appellant must prove: 1) the existence of an actual error (i.e., deviation from a legal rule); 2) that the error is plain or obvious; and 3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Id.*; 20 O.S.2011, §§ 3001.1. If these elements are met, this Court will correct plain error only if the error "seriously affect[s] the fairness, integrity or public reputation of the judicial proceedings" or otherwise represents a "miscarriage of justice." *Id.*

In *Wortham v. State*, 2008 OK CR 18, ¶ 16, 188 P.3d 201, the State presented the preliminary hearing transcript to the District Court as documentary evidence to be considered in support of its application and this Court found that the preliminary hearing transcript provided competent evidence upon which the appellant's suspended sentence could be revoked. While the State should have made a proper record and offered the transcript into evidence, it is clear from the record that Judge Barcus based his decision on the testimony heard and evidence presented at the preliminary hearing for Case No. CF-2014-220. Addressing Appellant's claim that Judge Barcus abused his discretion by considering the preliminary hearing proceeding in CF-2014-220, Appellant has not shown that the failure to admit the transcript into

evidence affected the outcome of the proceeding. We find no merit to this proposition of error.

DECISION

The acceleration of Appellant's deferred sentence in Tulsa County District Court Case No. CF-2008-2232 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE MARK BARCUS, DISTRICT JUDGE**

**APPEARANCES AT
ACCELERATION HEARING**

DAN GOOD
ASSISTANT PUBLIC DEFENDER
423 S. BOULDER AVE.
TULSA, OKLAHOMA 74103
COUNSEL FOR DEFENDANT

JENNY PROEHL-DAY
ASSISTANT DISTRICT ATTORNEY
500 SOUTH DENVER
TULSA, OKLAHOMA 74103
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

CHRISTINA A. BURNS
TULSA COUNTY PUBLIC
DEFENDER'S OFFICE
423 S. BOULDER AVE., SUITE 300
TULSA, OKLAHOMA 74103
COUNSEL FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
TIMOTHY J. DOWNING
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st STREET
OKLAHOMA CITY, OKLAHOMA 73105
COUNSEL FOR THE STATE

OPINION BY: LEWIS, J.

SMITH, P.J.: Specially Concurs
LUMPKIN, V.P.J.: Concurs
JOHNSON, J: Concurs
HUDSON, J.: Concurs

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SMITH, P.J., SPECIALLY CONCURRING:

This case differs from *Bohte v. State*, RE-2013-966, in that this court had no transcript to review as a part of the record in *Bohte*. Here, the defendant both argued the facts from the transcript to the trial judge and designated the transcript for this court to review.