



ORIGINAL

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

JESSE EARL MAUPIN,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2017-1284

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

AUG - 8 2019

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Jesse Earl Maupin, was tried and convicted by jury of Lewd or Indecent Acts to a Child Under 16, in violation of 21 O.S.Supp.2015, § 1123(A)(2), in the District Court of Washita County, Case No. CF-2017-10. The jury recommended a sentence of life imprisonment. The Honorable F. Douglas Haught, District Judge, presided at trial and sentenced Maupin in accordance with the jury's verdict.¹ The court further imposed various costs and fees. Maupin now appeals, raising the following issues:

¹ Under 21 O.S.Supp.2015, § 13.1, Maupin must serve a minimum of 85% of his sentence before he is eligible for parole.

- I. THERE WAS INSUFFICIENT EVIDENCE FOR A RATIONAL TRIER OF FACT TO FIND APPELLANT GUILTY OF LEWD OR INDECENT ACTS TO CHILD UNDER 16;
- II. THE 'LIFE' SENTENCE GIVEN BY THE JURY AND IMPOSED BY THE COURT IS NOT A VALID SENTENCE WITHIN THE STATUTORY RANGE OF PUNISHMENT AS INDICATED BY THE INSTRUCTION GIVEN TO THE JURY;
- III. THE SENTENCE IMPOSED BY THE TRIAL COURT UPON THE APPELLANT'S FINDING OF GUILT IN CF-2017-10 WAS EXCESSIVE AND OPPRESSIVE; and
- IV. THE ERRORS WITHIN THE TRIAL, UNDER A CUMULATIVE EFFECT, DEMAND APPELLANT BE ALLOWED A NEW TRIAL.

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. Maupin's Judgment and Sentence is therefore **AFFIRMED.**

Proposition I: The issue in this proposition is whether, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *Davis v. State*, 2011 OK CR 29, ¶ 74, 268 P.3d 86, 111. This analysis requires

examination of the entire record. *Young v. State*, 2000 OK CR 17, ¶ 35, 12 P.3d 20, 35. “This Court will accept all reasonable inferences and credibility choices that tend to support the verdict.” *Davis*, 2011 OK CR 29, ¶ 74, 268 P.3d at 111. Further, the law makes no distinction between direct and circumstantial evidence and either, or any combination of the two, may be sufficient to support a conviction. *Miller v. State*, 2013 OK CR 11, ¶ 84, 313 P.3d 934, 965.

The elements of Lewd or Indecent Acts to Child Under 16 as charged in this case are: 1) the defendant knowingly or intentionally; 2) looked upon, touched, mauled or felt; 3) the body or private parts; 4) of a child under sixteen years of age; 5) in any lewd or lascivious manner; and 6) the defendant is at least three years older than the child. 21 O.S.Supp.2015, § 1123(A)(2); OUJI-CR(2d) No. 4-129. (O.R. 76). The words “lewd” and “lascivious” have the same meaning, which is “an unlawful indulgence in lust or eagerness for sexual indulgence.” *Reeves v. State*, 1991 OK CR 101, ¶¶ 44-47, 818 P.2d 495, 504; *see also Rich v. State*, 1954 OK CR 7, ¶ 11, 266 P.2d 476, 479. Taking the evidence in the light most favorable to the State, our review of the record confirms that

sufficient evidence was presented at trial to convict Maupin as charged. Proposition I is denied.

Proposition II: Maupin argues a sentence of life imprisonment is not within the statutory range of punishment for Lewd or Indecent Acts to a Child Under 16. Title 21, Section 1123(A) provides that a person convicted of molesting a child under twelve shall be punished by imprisonment for not less than twenty-five years. 21 O.S.Supp.2015, § 1123(A). Because § 1123(A) does not specifically set forth a range of punishment that includes life imprisonment, *i.e.*, twenty-five years to life, Maupin asserts imposition of a life sentence was not an option for the jury. From this contention, Maupin argues that the prosecutor erroneously advised the jury “the range of punishment on this crime is a minimum of 25 years and up to life in prison” and requested the jury “sentence him to life.” He further contends the trial court’s inclusion of OUJI-CR (2d) No. 10-13B, instructing the jury on the 85% rule in relation to a life sentence, was error. He then argues that “[t]hese errors affected the ultimate sentence the jury recommended and the Judge imposed[.]”

Maupin acknowledges he failed to object at trial to the prosecutor's statements or the jury instructions and thus has waived all but plain error review of his claim. *Mitchell v. State*, 2016 OK CR 21, ¶24, 387 P.3d 934, 943. To be entitled to relief under the plain error doctrine, Appellant must show the existence of an actual error (i.e., deviation from a legal rule), that is plain or obvious, and that affects his substantial rights, meaning the error affected the outcome of the proceeding. *Bramlett v. State*, 2018 OK CR 19, ¶ 23, 422 P.3d. 788, 796. If these elements are met, "[t]his 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." *Id.* (quoting *Stewart v. State*, 2016 OK CR 9, ¶ 25, 372 P.3d 508, 514); 20 O.S.2011, § 3001.1.

Upon review, we find no actual or obvious error occurred as Maupin's life sentence is a valid sentence under the law. When no maximum term of punishment is decreed, a defendant may be sentenced to any number of years at or above the minimum, including life. 21 O.S.2011, § 62.1; *Fields v. State*, 1972 OK CR 194, ¶ 23, 501 P.2d 1390, 1393. Thus, the prosecutor's argument

for a life sentence and the trial court's inclusion of OUJI-CR (2d) No. 10-13B was not error—plain or otherwise. See 21 O.S.2011, § 62.1; *Anderson v. State*, 2006 OK CR 6, ¶ 24, 130 P.3d 273, 282 (where a sentence of life imprisonment is an option, the jury should be instructed on the application of the 85% Rule to a life sentence). Proposition II is denied.

Proposition III: “This Court will not modify a sentence within the statutory range unless, considering all the facts and circumstances, it shocks the conscience.” *Baird v. State*, 2017 OK CR 16, ¶ 40, 400 P.3d 875, 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. Our review of the record shows that Maupin's sentence is factually substantiated and appropriate. Under the total circumstances, the sentence imposed does not shock the conscience and is not excessive. Proposition III is denied.

Proposition IV: Relief for Maupin's cumulative error claim is denied because we found no error in his various propositions.

Bivens v. State, 2018 OK CR 33, ¶ 35, 431 P.3d 985, 996.

Proposition IV 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. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF WASHITA COUNTY
THE HONORABLE F. DOUGLAS HAUGHT, DISTRICT JUDGE

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OPINION BY: HUDSON, J.

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KUEHN, V.P.J.:	CONCUR
LUMPKIN, J.:	CONCUR
ROWLAND, J.:	CONCUR