

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

JOSEPH EUGENE DEAN,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2019-224

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

FEB 13 2020

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Joseph Eugene Dean, was tried and convicted by a jury in Muskogee County District Court, Case No. CF-2017-1030, of Endangering Others While Eluding or Attempting to Elude Police Officer, After Former Conviction of Two or More Felonies (Count 2), in violation of 21 O.S.2011, § 540(B).¹ The jury recommended a sentence of twenty years imprisonment and a \$2,500.00 fine. The Honorable Bret A. Smith, District Judge, presided at trial and sentenced Dean in accordance with the jury's verdict. Judge Smith also imposed various costs and fees.

¹ The jury acquitted Appellant of Count 1—Possession of a Stolen Vehicle.

Dean now appeals, raising the following proposition of error before this Court:

- I. APPELLANT WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ART. II, §§ 7, AND 20, OF THE OKLAHOMA CONSTITUTION.

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**.

Proposition I: Dean asserts defense counsel was ineffective for failing to request a cautionary eyewitness identification instruction—OUJI-CR (2d) 9-19. As Dean fails to provide any relevant authority or argument supporting his claim,² we find he has forfeited appellate review of the issue. Rule 3.5(C)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2020) ("Failure to present relevant authority in compliance with these requirements will result in the issue being forfeited on appeal."); *Bench v. State*, 2018 OK CR

² While Dean provides legal authority relating to the standard of review for claims of ineffective assistance of counsel, he fails to provide any relevant legal authority or argument to support the underlying basis of his claim—i.e. that a cautionary eyewitness identification instruction was warranted.

31, ¶ 96, 431 P.3d 929, 958, *cert. denied*, *Bench v. Oklahoma*, ___U.S.___, 140 S. Ct. 56 (2019).

We alternatively reject Dean’s ineffectiveness claim on the merits. To prevail on an ineffective assistance of counsel claim, a defendant must show both that counsel’s performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *See also Harrington v. Richter*, 562 U.S. 86, 104–05 (2011) (summarizing *Strickland* two-part test). In the present case, a cautionary eyewitness identification instruction was unwarranted as “no serious question exist[ed] concerning the reliability of the [eyewitness’s] identification[s].” *Robinson v. State*, 1995 OK CR 25, ¶ 56, 900 P.2d 389, 404. *See also Mason v. State*, 2018 OK CR 37, ¶ 25, 433 P.3d 1264, 1272. Trial counsel was therefore not ineffective for failing to make a meritless request for such instruction. *Logan v. State*, 2013 OK CR 2, ¶ 11, 293 P.3d 969, 975 (“The omission of a meritless claim . . . cannot constitute deficient performance; nor can it have been prejudicial.”). *See also Barnes v. State*, 2017 OK CR 26, ¶ 19, 408 P.3d 209, 216; *Jackson v. State*, 2016 OK CR 5, ¶ 13, 371 P.3d 1120, 1123. Dean’s sole proposition of error is thus 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. (2020), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE MUSKOGEE COUNTY DISTRICT COURT
THE HONORABLE BRET A. SMITH, DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: HUDSON, J.
LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR