



In his first proposition of error, Appellant claims the trial court erred in its instruction that the jury could find two or more prior convictions for the purpose of sentence enhancement. Appellant failed to object on this basis at trial, waiving all but plain error. To obtain relief, the defendant must prove a plain or obvious error affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

“Felony offenses relied upon [for the purpose of sentence enhancement] shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location.” 21 O.S.2011 § 51.1(C). Appellant’s prior crimes occurred on different days, involved different victims, and were not transactional under 21 O.S.2011 § 51.1(C); *Hammer v. State*, 1988 OK CR 149, ¶ 10, 760 P.2d 200, 203. He has not shown error, and thus no plain error occurred. Proposition One is denied.

Appellant’s second proposition of error claims defense counsel’s failure to object to the jury instruction that two or more prior convictions could be used for sentence enhancement was ineffective assistance of counsel. Reviewing this claim according to the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674, Appellant must demonstrate that counsel’s performance was constitutionally deficient, and that he was prejudiced by said performance, depriving him of a fair trial with a reliable result. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064. “Where objections that might have been raised would have been properly overruled . . . [the appellant fails] to show that any errors by counsel were so great as to render the results

of the trial unreliable.” *Short v. State*, 1999 OK CR 15, ¶ 85, 980 P.2d 1081, 1106-07. Proposition Two is denied.

Although neither party raises the issue on appeal, we note that the trial court sentenced Appellant to a two (2) year term of post-imprisonment supervision. This is plain error according to the language of 22 O.S.Supp.2014, section 991a-21(A), which limits such supervision for this offense to a term of nine (9) months to one (1) year. The Court will therefore modify this term to one (1) year of post-imprisonment supervision.

### **DECISION**

The Judgment and Sentence of the District Court of Ottawa County is **MODIFIED** to a term of one (1) year of post-imprisonment supervision, and otherwise **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 OTTAWA COUNTY THE HONORABLE ROBERT G. HANEY, DISTRICT JUDGE**

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OPINION BY LEWIS, J.  
SMITH, P.J.: Concur  
LUMPKIN, V.P.J.: Concur  
A. JOHNSON, J.: Concur