



**ORIGINAL**

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

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

**DEC 13 2018**

**JOHN D. HADDEN  
CLERK**

**KENNETH DONALD KNOX,** )

**Appellant,** )

**v.** )

**STATE OF OKLAHOMA,** )

**Appellee.** )

**NOT FOR PUBLICATION**

**Case No. F-2017-602**

**SUMMARY OPINION**

**HUDSON, JUDGE:**

Appellant, Kenneth Donald Knox was tried by a jury and convicted in the District Court of Tulsa County, Case No. CF-2015-6231, of Child Abuse by Injury, in violation of 21 O.S.2011, § 843.5(A). The jury recommended as punishment twenty-five (25) years imprisonment. The Honorable Doug Drummond, District Judge, presided at trial and sentenced Knox in accordance with the jury's verdict.<sup>1</sup> Judge Drummond also imposed three (3) years of post-imprisonment supervision. Knox now appeals, raising three (3) propositions of error:

<sup>1</sup> Under 21 O.S.2011 § 13.1(8), Knox must serve 85% of the sentence imposed before he is eligible for parole.

- I. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL;
- II. THERE IS INSUFFICIENT EVIDENCE TO SUPPORT CONVICTION; and
- III. THE COURT'S IMPOSITION OF THREE YEARS POST-IMPRISONMENT SUPERVISION IS IMPROPER AS IT WAS NOT AUTHORIZED BY STATUTE.

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 with respect to Appellant's conviction and twenty-five (25) year sentence which are both **AFFIRMED**. However, the period of post-imprisonment supervision imposed by the trial court is **MODIFIED** to one (1) year as discussed herein.

**Proposition I:** To prevail on an ineffective assistance of counsel claim, the appellant 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, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). See *Harrington v. Richter*, 562 U.S. 86, 104, 131 S. Ct. 770, 787-88, 178 L. Ed. 2d 624 (2011) (discussing *Strickland*, *supra*). In the present

case, Appellant fails to meet his burden of showing that counsel was ineffective. Appellant's ineffectiveness claim is unsupported by the record and he does not request an evidentiary hearing. Appellate counsel's internet search is not part of the record on appeal. See Rule 3.11(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011). "We have consistently held that we will not review allegations of error that are neither supported in the record or by legal authority." *Bench v. State*, 2018 OK CR 31, ¶ 125, \_\_P.3d\_\_. Appellant thus has failed to show errors by defense counsel that were so serious as to deprive him of ineffective assistance of counsel. Proposition I is denied.

**Proposition II:** "We review sufficiency of the evidence claims in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Davis v. State*, 2011 OK CR 29, ¶ 74, 268 P.3d 86, 111 (citing *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787, 61 L. Ed. 2d 560, 571 (1979) and *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04). 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.

Taken in the light most favorable to the State, the record evidence allowed any rational trier of fact to conclude beyond a reasonable doubt that Appellant willfully or maliciously injured four (4) month-old N.P. by inflicting the numerous injuries found on the victim. The Supreme Court has instructed that a sufficiency of evidence review “is limited to ‘record evidence’ . . . and does not extend to non-record evidence, including newly discovered evidence.” *Herrera v. Collins*, 506 U.S. 390, 402, 113 S. Ct. 853, 861, 122 L. Ed. 2d 203 (1993) (quoting *Jackson*, 443 U.S. at 318, 99 S. Ct. at 2788). Appellant’s attempt to place new evidence before the Court using references from a law review article or some other online source is improper. Proposition II is denied.

**Proposition III:** Appellant was eligible for a period of not less than nine (9) months nor more than one (1) year of post-

imprisonment supervision under 22 O.S.Supp.2012, § 991a-21(A). Both parties correctly assert that the longer term of post-imprisonment supervision authorized by Title 22 O.S.Supp.2014, § 991(A)(1)(f) is expressly limited to Section 843.5 offenses involving sexual abuse or sexual exploitation. We accept the State's concession of error on this point and **MODIFY** the three (3) year period of post-imprisonment supervision imposed in this case to one (1) year. Proposition III is granted.

### **DECISION**

The Judgment and Sentence of the District Court is **AFFIRMED** except the period of post-imprisonment supervision imposed by the district court is **MODIFIED** to one (1) year. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE DOUG DRUMMOND, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

KYLE KILLIAM  
ATTORNEY AT LAW  
2017 SOUTH ELM PLACE  
SUITE 108  
BROKEN ARROW, OK 74012  
COUNSEL FOR DEFENDANT

SARAH MCAMIS  
TANYA WILSON  
TULSA COUNTY  
ASST. DISTRICT ATTORNEYS  
500 SOUTH DENVER AVENUE  
SUITE 900  
TULSA, OK 74103  
COUNSEL FOR THE STATE

**OPINION BY: HUDSON, J.**

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

**APPEARANCES ON APPEAL**

ARIEL PARRY  
P.O. BOX 926  
NORMAN, OK 73070  
COUNSEL FOR APPELLANT

MIKE HUNTER  
ATTORNEY GENERAL OF  
OKLAHOMA  
AMBER MASTERS  
ASST. ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR APPELLEE