

- IV. Trial counsel and the State deprived Appellant of his Fifth, Sixth and Fourteenth Amendment right to effective assistance of counsel and a fair trial by various ways raised by Appellant in his *pro se* brief, including counsel's failure to adequately investigate his case, counsel's failure to present mitigating mental health evidence, and the State's failure to disclose (and counsel's failure to discover) deals the State made with the complainant that would have impeached her credibility.

After a thorough consideration of these propositions and the entire record before us, including the original record, transcripts, and briefs of the parties, we find modification is required, as set forth below.

With respect to proposition one, we find defense counsel should have used the lab report during cross-examination of the victim; however, no prejudice occurred, at least insofar as a determination of guilt is concerned. Appellant has not shown a reasonable probability that but for counsel's professional error the result of the proceeding would have been different, and this lone error does not sufficiently undermine our confidence in the outcome reached. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984).

With respect to proposition two, we find no reasonable trial strategy in defense counsel's failure to claim that Appellant's prior felony convictions, occurring against the same victims on the same day in the same county of Arkansas, were transactional.¹ 21 O.S.Supp.2002, § 51.1. The clear appearance is that they were. This error is addressed by a modification of the sentence.

With respect to proposition three, we find no prosecutorial misconduct. *Ryder v. State*, 2004 OK CR 2, ¶ 83, 83 P.3d 856, 875.

¹ Appellant's motion to supplement the record, tendered June 12, 2006, is hereby granted. The request for evidentiary hearing is hereby denied.

And finally, with respect to the ineffective assistance and *Brady* claims raised in Appellant's *pro se* brief, we find none entitling Appellant to any further relief. Many of the ineffective assistance claims raised fall within the scope of strategic choices, while others are not adequately supported. Appellant's *pro se* claims do not show errors by counsel that were so serious as to deprive him of a fair trial, one with a reliable result, under the teachings of *Strickland*.

DECISION

Appellant's conviction is hereby **AFFIRMED**, but his sentence is hereby **MODIFIED** to twenty-five (25) years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE THOMAS P. THORNBROUGH, DISTRICT JUDGE

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CHAPEL, J.: CONCUR
A. JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR IN RESULT

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