

imprisonment and a \$1,000.00 fine. The trial court ordered the sentences to be served consecutively. Sanders appeals from this Judgment and Sentence.

Sanders raises two propositions of error in support of his appeal:

- I. Separate punishments imposed for a single criminal episode require reversal, and
- II. The State used impermissible prosecutorial misconduct to increase punishment in this case.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we have determined that reversal is unnecessary but that modification of the sentence is required under the law and evidence. In reaching our decision we find in Proposition I that Sanders's convictions for Sexual Battery and Procuring a Lewd Exhibition, and for First Degree Rape and Rape by Instrumentation violate neither § 11 of Title 21 nor traditional protections against double jeopardy.¹ We find in Proposition II that the prosecutor's inflammatory and improper comments during second stage closing contributed to the bizarre and excessive 4000 year sentences, necessitating modification.²

Decision

The Judgment of the trial court is **AFFIRMED** and the Sentence is **MODIFIED** on all counts except the misdemeanor marijuana charge from 4000 years to life imprisonment. The sentences will remain consecutively.

¹ *Hale v. State*, 888 P.2d 1027, 1028 (Okl.Cr.1995).

² *Coulter v. State*, 734 P.2d 295, 301 (Okl.Cr.1987).

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OPINION BY: CHAPEL, J.:

STRUBHAR, P.J.:	CONCUR
LUMPKIN, V.P.J.:	CONCUR IN PART/DISSENT IN PART
LILE, J.:	CONCUR IN RESULT
JOHNSON, J.:	CONCUR

LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgment but dissent to the modification of the sentence. Having read the prosecutor's comments in question, I do not find these comments contributed to the sentences in this case. The facts of the case and Appellant's ten (10) prior felonies were the reason the lengthy sentences were recommended by the jury, not the prosecutor's comments.

Further, if this Court insists on modifying the sentences, they must be modified to a term of years, the only statutorily available punishment at the time of the offenses, and not life imprisonment.