

OCT 13 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

JASON VAN DUSEN,)	
)	
Appellant,)	NOT FOR PUBLICATION
v.)	Case No. F-2003-1316
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, JUDGE:

Jason Van Dusen was convicted of Count I: Rape by Instrumentation in violation of 21 O.S.2001, § 1111.1 and Count II: First Degree Rape in violation of 21 O.S.2001 § 1114, after former felony conviction in the District Court of Blaine County, Case No. CF-2002-55. In accordance with the jury's recommendation, the Honorable Mark A. Moore sentenced Van Dusen to consecutive seventy-five (75) year sentences. Van Dusen appeals these Judgments and Sentences.

Van Dusen raises the following propositions of error:

- I. Appellant was deprived of a fair sentencing because of all the information presented regarding pardon and parole and length of sentences.
- II. Prosecutorial misconduct deprived Appellant of a fair trial.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find that reversal is not required but that Van Dusen's sentence must be modified. We find in Proposition I the prosecutor improperly injected the

possibility of parole into second stage closing argument, requiring us to modify Van Dusen's sentences to thirty (30) years' imprisonment for each count.¹ We find in Proposition II that no additional relief for any other possible impropriety in the prosecutor's argument is necessary due to the relief recommended in Proposition I.

Decision

The Judgments are **AFFIRMED** and the Sentences are **MODIFIED** to thirty (30) years' imprisonment for each count to be served consecutively.

ATTORNEYS AT TRIAL

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OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULTS
STRUBHAR, J.: CONCUR

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¹ *Stringfellow v. State*, 744 P.2d 1277, 1279 (Okla. Cr. 1987). The prosecutor improperly argued to the jury that Van Dusen could be paroled early based upon the amount of time he had served for his previous convictions. When confronted with the new law requiring that certain convicted criminals serve no less than 85% of their sentence before becoming parole eligible, the prosecutor improperly argued that the legislature could always change the law again.