IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STEVEN EUGENE RASH,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
v.	)	Case No. F-98-1288
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

CHAPEL, JUDGE:

After a jury trial in Tulsa County District Court Case No. CF-98-5, Steven Rash was convicted of Counts I and II: Robbery with a Firearm in violation of 21 O.S.1991, §§ 791 and 801; Count III: Attempted Robbery with a Firearm in violation of 21 O.S.1991, § 801; Count IV: Kidnapping in violation of 21 O.S. 1991, § 741; Counts V, VI, VII, VIII, IX, X, XI, XII, XIII, and XVIII: First Degree Rape in violation of 21 O.S.Supp.1997, § 1114; Count XIV: Rape by Instrumentation in violation of 21 O.S.1991, § 1111.1; Count XV: Forcible Sodomy in violation of 21 O.S.Supp.1997, § 888; Count XVII: Possession of a Firearm After Former Conviction of a Felony in violation of 21 O.S.Supp.1997, § 1283;[1] Count XIX: Feloniously Pointing a Firearm in violation of 21 O.S.Supp.1997, § 1289.16; and Count XX: Shooting with Intent to Kill in violation of 21 O.S.Supp.1997, § 652, after former conviction of two felonies.[2]

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[1] Rash was only convicted after former conviction of a felony for this count.

[2] Rash was acquitted of Count XXI: Robbery with a Firearm; the prosecution dismissed Count XVI: Entering with Unlawful Intent, during the trial.

Following the jury's recommendation, the Honorable Jefferson D. Sellers sentenced Rash to serve the following sentences consecutively: Counts I, II, and III: one hundred (100) years and a $5,000.00 fine for each count; Counts V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, and XVIII: four hundred and fifty (450) years and a $10,000.00 fine for each count; Count XVII: thirty (30) years and a $2,000.00 fine; Count XIX: fifty (50) years and a $2,500.00 fine and Count XX: two hundred and fifty (250) years and a $5,000.00 fine. Rash has perfected his appeal to this Court.

Rash raises the following propositions of error:

I. Mr. Rash was convicted of one count of robbery with a firearm and one count of attempted robbery with a firearm arising from one criminal act in violation of the Double Jeopardy Clause of the Fifth Amendment and Article II, Section 21, of the Oklahoma Constitution.

II. Mr. Rash's conviction for possession of a firearm after former conviction of a felony violates 21 O.S.1991, § 11.

III. The legal instructions were contradictory as to the specific intent essential to the charge of feloniously pointing a deadly weapon.

IV. Mr. Rash's punishment was enhanced based on transactional priors in violation 21 O.S.1991, §51(B).

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 under the law and evidence. Additionally, we find that the sentences for Counts I-XV and XVIII-XX must be modified.

We find in Proposition I that there is no double jeopardy violation when separate individuals are robbed or threatened with robbery at the same time and location.[3] We find in Proposition II that 21 O.S.1991, § 11 was not violated because the offense of Possession of a Firearm After Former Conviction of a Felony is separate and distinct from the crimes of Robbery with a Firearm, Attempted Robbery with a Firearm, and Shooting with Intent to Kill.[4] We find in Proposition III that there was no plain error in the instructions given for the charge of Feloniously Pointing a Deadly Weapon.[5] We find in Proposition IV that Rash's sentences in Counts I-XV and XVIII-XX were erroneously enhanced based upon two prior felony convictions that occurred in the same "series of events."[6] Accordingly, we modify Rash's sentences in Counts I-XV and XVIII-XX to forty-five (45) years for each count to be served consecutively.

Decision

The Judgments of the trial court as to all counts and the sentence for Count XVII are **AFFIRMED**, and the sentences for Counts I-XV and XVIII-XX are **MODIFIED** to forty-five (45) years for each count to be served consecutively.

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[3] *Orcutt v. State,* 52 Okl.Cr. 217, 3 P.2d 912, 916 (1931) (no double jeopardy violation for two robbery prosecutions from the same incident where there were two victims).
[4] *See Hale v. State,* 888 P.2d 1027, 1028 (Okl.Cr.1995)
[5] *Grady v. State,* 947 P.2d 1069, 1070-71 (Okl.Cr.1997).
[6] 21 O.S.1991, §51; *see Smith v. State,* 736 P.2d 531 (Okl.Cr.1987) (defendant's acts of pointing a pistol at one victim while fleeing after the armed robbery of another victim was one series of events).

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OPINION BY: CHAPEL, J.

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

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

I concur in the Court's decision to affirm the convictions in this case. However, I agree with Judge Lile and find there is no basis in the law or fact to modify the sentences. The Appellant committed approximately twenty (20) different crimes during this ordeal. The finding of one or more prior felony convictions only establishes the minimum sentence allowed with no maximum in either case. The verdict is a valid verdict and should be applied.

I am authorized to state that Judge Lile joins in this Concur in Part/Dissent in Part.