IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

HARLEY C. SATTERFIELD,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	No. F-2000-346
-vs-	)	
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

STRUBHAR, J.:

Harley C. Satterfield, Appellant, was tried by jury and convicted of one count of Rape by Instrumentation (21 O.S.1991, §1111.1)(Count I) and one count of Forcible Sodomy (21 O.S.Supp.1992, §888) (Count III),[1] in the District Court of Tulsa County, Case No. CF-92-4518, the Honorable Jesse S. Harris, District Judge, presiding. In accordance with the jury's recommendation, the trial court sentenced Appellant to forty years imprisonment and a $10,000 fine on Count I and twenty years imprisonment and a $10,000 fine on Count III. From this judgment and sentence, he appeals.

The following propositions of error were considered and neither reversal nor modification are required under the law and evidence:

I. Appellant's convictions for two separate offenses, which arose from a single transaction, violate the prohibitions against double punishment and double jeopardy;

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[1] Appellant was charged by amended Information with two counts of Rape by Instrumentation (Counts I and II) and two counts of Forcible Sodomy (Counts III and IV) against S.G. The jury could not reach a verdict on Count II and acquitted Appellant of Count IV.

II. Prosecutorial misconduct denied the Appellant a fair trial and constituted fundamental error; and

III. The sentences imposed against Mr. Satterfield are excessive and should be modified.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm. As to Appellant's first proposition of error, we find Appellant committed two separate acts constituting two separate crimes which required the State to prove the different essential elements of each. Therefore, there is no section 11 or double jeopardy violation. *Davis v. State*, 993 P.2d 124, 126 (Okl.Cr.1999). As to Appellant's second proposition, we find Appellant was not deprived of a fair trial or denied a substantial right by the allegations of prosecutorial misconduct cited. *Spears v. State*, 900 P.2d 431, 445 (Okl.Cr.), *cert. denied*, 516 U.S. 1031, 116 S.Ct. 678, 133 L.Ed.2d 527 (1995). Finally, we find Appellant's sentence is not excessive based on this record and that his claim regarding his fines is premature. *Perryman v. State*, 990 P.2d 900, 905 (Okl.Cr.1999); *Anderson v. State*, 765 P.2d 1232, 1234 (Okl.Cr.1988).

DECISION

The Judgment and Sentence of the trial court is **AFFIRMED**.

CHAPEL, J., CONCURRING IN PART AND DISSENTING IN PART:

I concur in affirming the convictions. However, I find merit in Appellant's Proposition III. While it appears from the Judgement and Sentences for Counts I and III are to run concurrent, I would none-the-less modify the sentences to 20 and 10 years respectively.[1]

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[1] My opinion in this matter has incurred the wrath of another judge who has filed a Special Concur vote which proves by god that he is "tough on crime." The Special Concur vote, sadly, misses the point of my vote in this case and many, many others. See, e.g., *Backwater v. State*, F-99-515 (Unpublished opinion handed down 3/1/00). Satterfield was convicted of two very serious crimes. He should be punished and punished severely. Satterfield's punishment, however, should bear some relationship to the circumstances of the crime, his personal criminal history, and the punishment meted out to other defendants who commit similar crimes. In other words, Satterfield's punishment should not be disproportionate. In this case, the punishment is excessive on all counts.

First, the circumstances of the crimes committed, while very serious, are not particularly egregious when compared to other cases we regularly review. All rape and sodomy cases undoubtedly cause great harm to victims. The record here, however, indicates no serious physical injuries. Moreover, Satterfield had no prior convictions and, up until this incident, was apparently a reasonably productive citizen. A review of many other cases of defendants convicted of similar (but in some cases much more egregious circumstances) crimes shows sentences ranging from four to twenty years. See *Hopper v. State*, 302 P.2d 162 (1956); *Martin v. State*, 747 P.2d 316 (1987); *Salyers v. State*, 755 P.2d 97 (1988); *Webb v. State*, 538 P.2d 1054 (1975); *Curtis v. State*, 763 P.2d 377 (1988). Furthermore, the Oklahoma Sentencing Commission Report for Statewide Felony Dispositions for FY 2000 indicates the median sentences imposed upon defendants with no priors were 10.2 years for Rape by Instrumentation and 10 years for Forcible Sodomy. Here Satterfield received 40 years for Rape by Instrumentation and 20 years for Forcible Sodomy.

Disproportionate sentencing does nothing to advance the goals of punishment. Indeed, disproportionate sentences undermine the public's confidence in our system. A sentence of forty years to one defendant and four years to another for similar crimes cannot be justified except perhaps in some third world dictatorship.

The Oklahoma Department of Corrections was appropriated over $363 million for FY 2001 and has requested $533 million for FY 2002. Oklahoma now incarcerates more of its citizens for longer sentences than any other state in the nation. What most citizens do not know, however, is that the real explosion in the costs of incarceration is yet to come. Most of the extremely long sentences have been imposed and upheld in the last 15 years. Our prison population is not only getting larger it will inevitably get older. In the next 20 years as these prisoners reach old age they will begin to require huge outlays of state resources for their medical expenses and incarceration. The legislature attempted to address this problem with Truth in Sentencing legislation but was beaten down. I have attempted to address this problem in a modest way by suggesting that this Court's review of sentences is inadequate and results in unconstitutional disproportionate sentences. Thus far, the view as expressed by the Special Concur has prevailed. But there will be changes. There will have to be. Otherwise, this state will bankrupt itself by ridiculous sentences which serve no legitimate purpose.

LILE, JUDGE: SPECIALLY CONCURS

When the victim was ten years old, she was raped and sodomized by Appellant, a family friend. Appellant professed his love for the ten year old but also threatened that if she told about his actions, he would hurt the victim's mother and the victim's friend. This happened more than once. Appellant confessed, stating that he committed the alleged acts, not for his own pleasure, but for the pleasure of the "girls" who he thought enjoyed the encounters. After these events, the victim quit taking care of herself and didn't want to live. She even tried to hurt herself. The Concurring in Part and Dissenting in Part opinion states that the sentence should be reduced by half. The jury got this case right. No legal reason is offered in support of the suggestion and I suspect that is because there is absolutely no legal foundation for such a reduction in sentence, under the facts of this case. The jury verdict and trial court's sentence should be sustained.[1]

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[1] With regard to footnote No. 1 of the Dissent, it was not my "wrath" that was incurred, but rather my "disagreement." Being "tough on crime" is not the issue, the issue is following the law and not just making it up as we go along.