

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TINA MISHELL PEARSON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2014-54

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN - 1 2015

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LEWIS, JUDGE:

Tina Mishell Pearson, Appellant, was tried by jury and found guilty of Count 1, enabling child abuse by injury, in violation of 21 O.S.2011, § 843.5(B); and Counts 2 and 3, enabling child sexual abuse, in violation of 21 O.S.2011, § 843.5(G), in the District Court of Haskell County, Case No. CF-2012-175. The jury sentenced Appellant to a \$2,500.00 fine in Count 1, and ten (10) years imprisonment in each of Counts 2 and 3. The Honorable Jonathan K. Sullivan, District Judge, pronounced judgment and ordered the sentences served consecutively.¹ Ms. Pearson appeals in the following propositions of error:

1. The trial court erred in failing to suppress the statements of the defendant, as she was subjected to a custodial interrogation where she did not feel free to leave;

¹ Appellant must serve 85% of the sentences in Count 2 and 3 before being eligible for consideration for parole. 21 O.S.2011, § 13.1(14).

2. The trial court erred in allowing the case to be tried on Counts 2 and 3, as the Rule 6 review should not have reversed the magistrate's ruling;
3. The trial attorney was ineffective in her representation of the defendant;
4. The prosecutor acted improperly in offering a plea offer in exchange for the defendant's relinquishment of her parental rights.

In Proposition One, Appellant argues that the admission at trial of her unwarned statements obtained by custodial interrogation violated her rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, (1966). Appellant moved to suppress her statements and preserved the issue for review. We review the denial of a motion to suppress for abuse of discretion, deferring to the trial court's findings of fact unless they are clearly erroneous. *Gomez v. State*, 2007 OK CR 33, ¶ 5, 168 P.3d 1139, 1141-42. Whether an unwarned statement was obtained by custodial interrogation is a question of law reviewed *de novo*. *Id.*; *State v. Pope*, 2009 OK CR 9, ¶ 4, 204 P.3d 1285, 1287; *Thompson v. Keohane*, 516 U.S. 99, 112-113, 116 S.Ct. 457, 465 (1995). The test for whether Appellant was in custody is whether a reasonable person in her position would not have felt free to leave the interview. *Andrew v. State*, 2007 OK CR 23, ¶ 72, 164 P.3d 176, 194-95. Under the facts and circumstances, the trial court correctly found that Appellant was not in custody, and no *Miranda* warnings were required. The statements were properly admitted. Proposition One is denied.

In Proposition Two, Appellant argues that the district court improperly reversed the magistrate's dismissal of Counts 2 and 3 after preliminary examination. The district court properly considered the evidence presented at preliminary examination and applied the correct legal standard on review. The district court also entered detailed findings and conclusions supporting its order. The court's decision reversing the magistrate was authorized by statute and supported by the evidence. 22 O.S.2011, § 1089.5. Proposition Two is therefore denied. *Cheatham v. State*, 1995 OK CR 32, ¶ 17, 900 P.2d 414, 421.

Proposition Three alleges that counsel rendered ineffective assistance at trial. In support of this claim, appellate counsel points principally to a letter of complaints filed by Appellant in the trial court, primarily focused on counsel's alleged failure to call additional witnesses. We address these complaints applying the familiar test required in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), requiring Appellant to establish that trial counsel's performance was deficient, and that she was prejudiced by the deficient performance. *Spears v. State*, 1995 OK CR 36, ¶ 54, 900 P.2d 431, 445. The decision which witnesses to call, if any, is generally one of strategy and will not be second guessed on appeal. *Delozier v. State*, 1998 OK CR 76, ¶ 47, 991 P.2d 22, 31. Because Appellant's allegations do not overcome the strong presumption that counsel was effective, Proposition Three is denied.

In Proposition Four, Appellant claims prosecutorial misconduct in the State's offer of a plea bargain that included terms for the settlement of a pending

petition to terminate Appellant's parental rights. Appellant made no objection to this offer at trial, thus waiving all but plain error. To obtain relief, Appellant must prove a plain or obvious error affected the outcome of the proceeding. *Simpson v. State*, 1994 OK CR 40, ¶¶ 2, 11, 876 P.2d 690, 693, 695. The Court will correct plain error only if the error "seriously affect[s] the fairness, integrity or public reputation of the judicial proceedings." *Id.*, ¶ 30, (citing *United States v. Olano*, 507 U.S. 725, 736, 113 S.Ct. 1770, 1777-78, 123 L.Ed.2d 508 (1993)). Appellant cites no authority for this claim and thus fails to show error, much less plain or obvious error. Appellant rejected the plea offer and demanded a trial. She does not allege that this alleged misconduct affected the outcome of that proceeding. This proposition is denied.

DECISION

The Judgment and Sentence of the District Court of Haskell County is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF HASKELL COUNTY
THE HONORABLE JONATHAN K. SULLIVAN, DISTRICT JUDGE**

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OPINION BY LEWIS, J.
SMITH, P.J.: Concurs
LUMPKIN, V.P.J.: Concurs
JOHNSON, J.: Concurs
HUDSON, J.: Concurs