



served consecutively.<sup>2</sup> Mr. Simmons appeals in the following propositions of error:

1. Prosecutorial misconduct during the State's closing argument during the punishment stage of trial deprived Appellant of a fair trial;
2. The Appellant was deprived of effective assistance of counsel.

In Proposition One, Appellant argues that the prosecutor's comment to the jury about the 85% Rule's application in Counts 2 and 3 indicated to the jury that he would not serve the full term of a sentence in Count 1, and thus caused the jury to prejudicially "round up" his sentence. Because there was no contemporaneous objection to this comment at trial, Appellant must show the challenged comment was a plain or obvious error that affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. The Court will correct a plain error only where it seriously affects the fairness, integrity, or public reputation of the proceeding. *Simpson v. State*, 1994 OK CR 40, ¶ 30, 876 P.2d 690, 701. We find no plain or obvious error in the prosecutor's statement affected the sentencing. Proposition One is denied.

---

<sup>2</sup> Appellant must serve 85% of his sentence on Counts 2 and 3 before being eligible for consideration for parole. 22 O.S.Supp.2015, § 13.1(8).

In Proposition Two, Appellant argues that trial counsel's failure to object to the comments challenged in Proposition One denied him the effective assistance of counsel. Reviewing this claim under the two-pronged deficient performance and prejudice test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), no relief is warranted. Proposition Two is denied.

**DECISION**

The judgment and sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE DOUG DRUMMOND, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

RICHARD KOLLER  
LORA HOWARD  
423 S. BOULDER AVE., STE 300  
TULSA, OK 74106  
ATTORNEYS FOR DEFENDANT

KEVIN GRAY  
ASST. DISTRICT ATTORNEY  
500 S. DENVER, STE. 900  
TULSA, OK 74103  
ATTORNEY FOR THE STATE

**APPEARANCES ON APPEAL**

RICHARD COUCH  
423 S. BOULDER AVE., STE 300  
TULSA, OK 74106  
ATTORNEY FOR APPELLANT

MIKE HUNTER  
ATTORNEY GENERAL  
TESSA L. HENRY  
ASST. ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR APPELLEE

OPINION BY: LEWIS, P.J.  
KUEHN, V.P.J.: Concur  
LUMPKIN, J.: Concur  
HUDSON, J.: Concur  
ROWLAND, J.: Concur