

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF
OKLAHOMA**

DOUGLAS EDWARD SCOTT,)

) **NOT FOR PUBLICATION**

Appellant,)

) Case No. F-2018-617

v.)

STATE OF OKLAHOMA)

) **FILED**
) **IN COURT OF CRIMINAL APPEALS**
) **STATE OF OKLAHOMA**

Appellee.)

) **APR 25 2019**

) **JOHN D. HADDEN**
) **CLERK**

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant Douglas Edward Scott was tried in a non-jury trial before the Honorable Cynthia Ferrell Ashwood, District Judge, and convicted of Domestic Assault and Battery by Strangulation, After Former Conviction of a Felony (Count I) (21 O.S.Supp.2014, § 644(J)) and Petit Larceny (Count II) (21 O.S.Supp.2017, § 1704), in the District Court of Lincoln County, Case No. CF-2017-206. The trial court sentenced Appellant to eight (8) years imprisonment in Count I and six (6) months in the county jail in Count II, said sentences to run concurrently. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following propositions of error in support of his appeal:

- I. The evidence was insufficient to support the charge of Domestic Assault and Battery by Strangulation.
- II. Appellant's sentence for Count 1 is excessive and should be modified by the Court.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that under the law and the evidence no relief is warranted.

In Proposition I, we review Appellant's challenge to the sufficiency of the evidence supporting his convictions in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt. *Mitchell v. State*, 2018 OK CR 24, ¶ 11, 424 P.3d 677, 682. While there was conflicting testimony in this case, we do not reweigh conflicting evidence or second-guess the decision of the fact-finder; we accept all reasonable inferences and credibility choices that tend to support the verdict. *Id.* The credibility of witnesses and the weight and consideration to be given to their

testimony are within the exclusive province of the trier of facts. *Rutan v. State*, 2009 OK CR 3, ¶ 49, 202 P.3d 839, 849. Here, the judge heard both the State's evidence and Appellant's testimony and rejected his claim of innocence. There is sufficient competent evidence in the record to support that decision and to support the finding of guilt. This proposition is denied.

In Proposition II, we find Appellant's sentence of eight (8) years for Domestic Assault and Battery by Strangulation, After Former Conviction of a Felony, is within the statutory range of punishment and appropriate based on the facts and circumstance of the case. The sentence is not so excessive as to shock the conscience of the Court. *See Thompson v. State*, 2018 OK CR 32, ¶ 16, 429 P.3d 690, 694 (this Court will not modify a sentence within the statutory range unless, considering all the facts and circumstances, it shocks our conscience). No modification of the sentence is warranted and this proposition is denied.

Accordingly, this appeal 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. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
THE HONORABLE CYNTHIA FERRELL ASHWOOD,
DISTRICT JUDGE

APPEARANCES AT TRIAL

APPEARANCES ON APPEAL

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

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