



OKLAHOMA STATE COURTS NETWORK

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TURNER v. STATE OF OKLAHOMA

2025 OK CR 23

Case Number: [F-2024-6002](#)

Decided: 11/13/2025

Mandate Issued: 11/13/2025

THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA



Cite as: 2025 OK CR 23, __ P.3d __

ANTHONY DIMITRI TURNER, Appellant,

v.

STATE OF OKLAHOMA, Appellee.

SUMMARY OPINION

HUDSON, JUDGE:

¶1 Appellant, Antony Dimitri Turner, was tried by jury in the District Court of Comanche County, Case No. CF-2021-590, and was convicted of Count 1: Sexual Battery, in violation of [21 O.S.Supp.2018, § 1123\(B\)](#); and Count 2: Lewd or Indecent Acts With a Child Under 16, in violation of [21 O.S.Supp.2018, § 1123\(A\)\(2\)](#). ¹ The jury sentenced Turner to five years imprisonment on Count 1 and ten years imprisonment on Count 2. The Honorable Jay Walker, District Judge, presided at trial and pronounced judgment and sentence in accordance with the jury's verdicts. Judge Walker further imposed a \$1,000.00 fine on each count, ordered the sentences to run consecutively and ordered credit for time served. ²

¶2 Turner now appeals, alleging two propositions of error. *First*, Turner alleges that the trial court erred by failing to ensure Appellant and the State entered a proper, written waiver of the presentence investigation report. *Second*, Turner claims that his trial counsel was constitutionally ineffective.

¶3 After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**.

¶4 **Proposition I.** Appellant complains that the trial court erred in denying him a presentence investigation. Appellant contends that a written waiver by both parties was necessary to waive the required presentence investigation and report. See [22 O.S.Supp.2019, § 982](#). Our review of this claim is for plain error only because it was not raised below and preserved with a contemporaneous objection. See *Simpson v. State*, [1994 OK CR 40, ¶¶ 11, 19, 876 P.2d 690, 694-95, 698](#). To demonstrate plain error, Appellant must show actual or obvious error affecting his substantial rights, meaning the error affected the outcome of the trial. *McCauley v. State*, [2024 OK CR 8, ¶ 26, 548 P.3d 461, 469](#). Even then, we correct plain error only if the error "seriously affected the fairness, integrity, or public reputation of the judicial proceedings or represented a miscarriage of justice." *Id.* (internal quotation omitted).

¶5 Appellant fails to show actual or obvious error. The trial court was not required to order a presentence investigation under the governing statute. Title [22 O.S.Supp.2019, § 982\(A\)](#) provides in pertinent part that: "[w]henever a person is convicted of a violent felony offense whether the conviction is for a single offense or part of

any combination of offenses . . . the court **may**, before imposing the sentence, require a presentence investigation be made of the offender by the Department of Corrections." (emphasis added). Title 22 O.S.Supp.2019, § 982(H) (11) provides that lewd or indecent acts with a child is a "violent felony offense" as used in this section.

¶6 The plain language of Section 982 shows the trial court was not required to order a presentence investigation for Appellant in this case. Instead, the decision whether to grant a presentence investigation is left, by statute, to the broad discretion of the trial court. See 22 O.S.Supp.2019, § 982(G) ("The **required** presentence investigation and report may be waived upon written waiver by the district attorney and the defendant and upon approval by the Court." (emphasis added)).

¶7 Because the PSI report was not mandatory under the governing statute, but was merely optional, no written waiver was required. The trial court reasonably declined to order a presentence investigation where the court heard firsthand the trial evidence relating to Appellant's crimes, including the accused's own testimony, and defense counsel orally waived a presentence investigation on the record after the verdicts were announced to facilitate Appellant's request for immediate sentencing. There was no error plain or otherwise based on this record. Proposition I is denied.

¶8 **Proposition II.** Appellant complains that his counsel was constitutionally ineffective for (1) failing to obtain a proper written waiver of his statutory right to a presentence investigation; and (2) failing to present at sentencing evidence of Appellant's good character. To prevail on an ineffective assistance of counsel claim, the defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). See *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (discussing *Strickland* two-part test).

¶9 To show deficient performance, Appellant must show that "counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The reviewing court must afford a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. *Id.* at 689. The defendant's burden is to show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687.

¶10 To show prejudice, Appellant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "The likelihood of a different result must be substantial, not just conceivable." *Richter*, 562 U.S. at 112 (citing *Strickland*, 466 U.S. at 693). Appellant fails to show deficient performance or prejudice with either of his ineffectiveness claims.

¶11 *First*, Appellant fails to show deficient performance or prejudice based on counsel's waiver on Appellant's behalf of a presentence investigation. The record showed that counsel conferred with Appellant before requesting immediate sentencing, and no written waiver of the presentence investigation was required under the statute as discussed above. The record does not show any disagreement whatsoever by Appellant with defense counsel's waiver. There is no deficient performance evident from the record based on the waiver, and Appellant fails to overcome the strong presumption that counsel's performance was within the wide range of reasonable professional assistance.

¶12 Moreover, "it is purely speculative . . . whether the presentence report [if] made would have contained mitigating information that would have resulted in the imposition of a lesser sentence." *Jimenez v. State*, 2024 OK CR 33, ¶ 12, 561 P.3d 1124, 1129. Appellant fails to demonstrate prejudice with this claim. *Id.* See *Knapper v. State*, 2020 OK CR 16, ¶ 13, 473 P.3d 1053, 1063 (holding that "speculative and conclusory" ineffectiveness claims are "wholly inadequate" to demonstrate ineffective assistance of counsel under the two-part *Strickland* test). Counsel was not ineffective based on his performance relating to the waiver.

¶13 *Second*, Appellant fails to show that trial counsel was ineffective for failing to present at sentencing the information contained within two handwritten letters attesting to Appellant's good character. This claim is based upon non-record evidence presented in his separately filed application for evidentiary hearing. 3 Appellant's

application for an evidentiary hearing on this claim is **DENIED**. Appellant fails to show by clear and convincing evidence there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence. Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025); *Mahdavi v. State*, 2020 OK CR 12, ¶¶ 46-47, 478 P.3d 449, 460. Proposition II is denied.

DECISION

¶14 The Judgment and Sentence of the District Court is **AFFIRMED**. Appellant's Application for Evidentiary Hearing on Sixth Amendment Ineffective Assistance of Counsel Claim is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM
THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE JAY WALKER, DISTRICT JUDGE**

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**OPINION BY: HUDSON, J.
LUMPKIN, P.J.: CONCUR
MUSSEMAN, V.P.J.: SPECIALLY CONCUR
LEWIS, J.: CONCUR
ROWLAND, J.: CONCUR**

MUSSEMAN, V.P.J., SPECIALLY CONCURRING:

¶1 I join the Court's opinion in full. I write separately only to use this moment to encourage parties and trial courts to begin using the new forms adopted by this Court. *In Re: Revision of Portion of the Rules of the Court of Criminal Appeals*, 2025 OK CR 14(order modifying Forms 13.8, Uniform Judgment and Sentence, and 13.10, Uniform Plea of Guilty -- Summary of Facts, and creating Form 13.18, Mary Rippy Violent Crime Act Notice); Rule 13.0, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025) (Mandating "forms shall be utilized by trial courts and parties . . .").

¶2 While these forms were adopted after the jury trial and subsequent sentencing in this case, and were primarily concerned with implementing the Sentencing Modernization Act of 2024, the amendments did contain several updates from case law and statutes. One modification the Court adopted in Form 13.10, Plea of Guilty --

Summary of Facts, was deleting the parties' waiver of a presentence investigation consistent with this Court's previous unpublished opinions as well as today's published opinion.

FOOTNOTES

HUDSON, JUDGE:

¹ Appellant was acquitted of first-degree rape (Count 3) and second-degree rape (Count 4).

² Appellant must serve 85% of the sentence imposed on Count 2 before becoming eligible for parole. 21 O.S.2021, § 13.1.

³ See Application for Evidentiary Hearing on Sixth Amendment Ineffective Assistance of Counsel Claim, filed with this Court on February 25, 2025.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name

Level

Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1994 OK CR 40, 876 P.2d 690,</u>	<u>SIMPSON v. STATE</u>	Discussed
<u>2020 OK CR 16, 473 P.3d 1053,</u>	<u>KNAPPER v. STATE</u>	Discussed
<u>2020 OK CR 12, 478 P.3d 449,</u>	<u>MAHDAVI v. STATE</u>	Discussed
<u>2024 OK CR 8, 548 P.3d 461,</u>	<u>MCCAULEY v. STATE</u>	Discussed
<u>2024 OK CR 33, 561 P.3d 1124,</u>	<u>JIMENEZ v. STATE</u>	Discussed
<u>2025 OK CR 14,</u>	<u>IN RE: REVISION OF PORTION OF THE RULES OF THE COURT OF CRIMINAL APPEALS</u>	Cited

Title 21. Crimes and Punishments

Cite	Name	Level
<u>21 O.S. 13.1,</u>	<u>Required Service of Minimum Percentage of Sentence - Offenses Specified</u>	Cited
<u>21 O.S. 1123,</u>	<u>Lewd or Indecent Proposals or Acts to Child Under 16</u>	Discussed

Title 22. Criminal Procedure

Cite	Name	Level
<u>22 O.S. 982,</u>	<u>Presentence Investigation</u>	Discussed at Length