IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

SUZANNE D. BARNETT,	)	**NOT FOR PUBLICATION**
Appellant,	)	
vs.	)	**No. F-2008-289**
THE STATE OF OKLAHOMA,	)	
Appellee.	)	

OPINION

A. JOHNSON, VICE PRESIDING JUDGE:

In the District Court of Seminole County, Case No. CF-2005-146A, Suzanne D. Barnett, Appellant, while represented by counsel, entered a plea of guilty to Count I, Unlawful Possession of Controlled Drug (Methamphetamine); Count II, Unlawful Possession of Marijuana; and Count III, Unlawful Possession of Paraphernalia. On July 18, 2005 pursuant to a plea agreement, the Honorable Lee G. Stilwell, Associate District Judge, deferred sentencing and admitted Barnett to the Seminole County Drug Court Program.

On February 25, 2008, the State filed an application to terminate Barnett from Drug Court. Following an evidentiary hearing on that application, the Honorable Gordon Allen, Associate District Judge, on March 19, 2008, terminated Barnett from Drug Court and sentenced her in the manner required by the Drug Court admission agreement to concurrent terms of ten years imprisonment on Count I, one year on Count II, and one year on Count III. Thereafter, on January 8, 2009, under the authority granted it by 22 O.S.Supp.2008, § 982a, the District Court suspended execution of these sentences conditioned on Barnett's completion of the Drug Court Program.

Barnett now appeals the final order of termination and raises three propositions of error. In Proposition I, she argues that the trial court abused

its discretion in terminating her participation in the Seminole County Drug Court Program. We agree, and find that the District Court's decision to end Barnett's participation in the Drug Court Program was contrary to the evidence presented and contrary to law.[1]

Background

Barnett entered the Drug Court Program in July of 2005 and submitted to her first drug test on August 8, 2005, testing positive for methamphetamine. Over the next two-and-a-half-years, Barnett would submit to urinalysis over sixty times. None of those tests returned a positive result for a criminal substance.

When she entered the Drug Court Program, Barnett was living with her mother, had lost custody of her children, had no telephone, and was without transportation. Because she lacked transportation and a phone, for the first several weeks following admission to Drug Court, Barnett walked more than a mile-and-a-half everyday to make her phone reports to the Drug Court team. Over her two-and-a-half years in the Drug Court Program, Barnett attended all required AA and NA meetings, sometimes walking from her mother's home in Maude to the AA meeting place in Seminole, a distance of twelve miles. While participating in the program, Barnett regained custody of her five children, supported them, and bought a home on which she made payments of $500.00 a month.

During her time in the Drug Court Program, the Oklahoma County Health Department employed Barnett in public service as the coordinator for its tobacco-use prevention program. While a Drug Court participant, Barnett, age twenty-nine at the time of her termination hearing, obtained her Bachelor's

[1] Our decision on this claim renders Barnett's two remaining claims and her application for evidentiary hearing moot. We will not address them.

Degree in psychology from a state university, and, before her termination from Drug Court, had made substantial progress toward obtaining a Master's Degree.

This success story came to an end on January 13, 2008, when a Seminole police officer arrested Barnett for driving under the influence of alcohol. The undisputed testimony showed that on the evening of Saturday, January 12, 2008, a co-worker took Barnett on a dinner date to a restaurant in Shawnee. While dining there, Barnett, after more than 400 days of sobriety, had two mixed drinks. Her date drove at all times, picking her up at her home and returning her later that evening. Upon arriving home, Barnett found her younger sister there. Her sister told Barnett that their mother, who was caring for their children, had phoned to say that the sister's baby was in need of some medicine. Her sister had no driver's license, so Barnett agreed to drive her to the local Wal-Mart to buy the medicine.

On their return home, the Seminole police officer stopped Barnett for having crossed the safety line on the highway's shoulder. The officer conducted a field sobriety test. Barnett failed, and the officer arrested Barnett for DUI. Because of the passage of time since her drinks at the restaurant, Barnett testified that at the time she chose to drive her sister to Wal-Mart, she believed she was no longer over the established legal limit for DUI. On the morning after her DUI arrest, Barnett reported the incident to the Seminole County special programs administrator, and several days later, Barnett voluntarily admitted herself for thirty days to the Valley Hope facility in Cushing for substance abuse treatment.

At the evidentiary hearing, a substantial portion of the testimony focused on whether Barnett's decision to drink alcohol was a "relapse." A member of

Barnett's Drug Court team testified to the team's opinion that this was not a relapse because Barnett had been substance free for over 405 days and had made a conscious choice to drink and drive. Barnett's Valley Hope counselor testified that in her opinion, Barnett's drinking was a relapse, did not warrant termination from Drug Court, and that Barnett was capable of completing the Drug Court Program.

Discussion

Whether a drug court participant's behavior amounts to a "relapse" or not does not control the disposition of a motion to terminate from drug court, as "[t]he drug court judge shall recognize relapses *and* restarts in the program," not just "relapses." 22 O.S.2001, § 471.7(E). Unless "the offender's conduct requires revocation from the program," the drug court judge should terminate only "if the offender is found to have violated the conditions of the plea agreement or performance contract and disciplinary sanctions have been insufficient to gain compliance." *Id.*

From a review of Judge Allen's termination decision, it does not appear that he terminated Barnett from Drug Court because the substance abuse treatment was not working; rather it appears termination was ordered solely because Barnett committed a DUI.

We find nothing in the Drug Court Act requiring automatic termination under such circumstances when all other evidence before the District Court establishes that substance abuse treatment has been working, can ultimately succeed, and that the Drug Court participant is capable of successfully completing the Drug Court Program.[2]

[2] Judge Allen has impliedly recognized Barnett's ability to complete the Drug Court Program when, on judicial review, he suspended execution of Barnett's sentences and directed that she complete the Drug Court Program as a condition of his suspension order.

In Barnett's case, she entered the Drug Court Program testing positive as a user of methamphetamine (a substance well known for its strong addictive properties), yet never again tested positive for methamphetamine nor any other illegal substance. Barnett had clearly benefited from the program and had made remarkable progress toward straightening out her life. Moreover, the evidence tends to show that, if allowed to continue in the program, she could successfully complete it. By terminating Barnett, Judge Allen ignored what the Act characterizes as the "primary objective of the [Drug Court] judge": "to keep the offender in treatment for a sufficient time to change behaviors and attitudes." 22 O.S.2001, § 471.7(F). As the evidence demonstrated that substance abuse treatment in lieu of incarceration had been succeeding and could continue to do so, and as there was nothing inherent in Barnett's particular DUI that proved otherwise, it was error for Judge Allen to terminate Barnett from the Seminole County Drug Court Program.

DECISION

The final order terminating Appellant, Suzanne D. Barnett, from Drug Court in Seminole County District Court, Case No. CF-2005-146A, is **REVERSED** and her convictions in that case **VACATED WITH INSTRUCTIONS** to reinstate Barnett to the Seminole County Drug Court Program under the conditions of the original performance contract that provided for dismissal of all counts on successful completion of that program. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2009), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

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C. Johnson, P.J.: Concur
Lumpkin, J.: Concur in Results
Chapel, J.: Concur
Lewis, J.: Concur

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