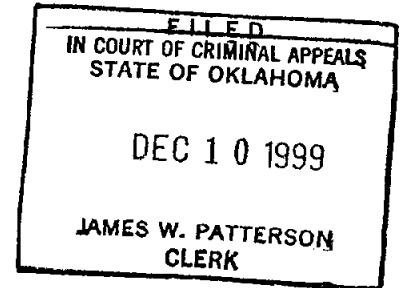


IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL RAY CHAVEZ,
Appellant,
-vs.-
STATE OF OKLAHOMA,
Appellee.

No. O-98-1415



ACCELERATED DOCKET ORDER

On January 22, 1990, in the District Court of Oklahoma County, Case No. CF-89-6043, Appellant received a suspended sentence of five years for Unauthorized Use of a Vehicle. On November 9, 1993, Appellant received a second five-year suspended sentence, this sentence being entered in Case No. CF-93-6349 for the offense of Concealing Stolen Property. On December 2, 1998, the Honorable William R. Burkett, District Judge, entered an order revoking the suspension of each five-year prison term. From this revocation order, Appellant has perfected this appeal.

The appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (1999). Oral argument was scheduled on December 2, 1999. On December 1, 1999, the State filed a "Motion to Dismiss Appeal as Moot." According to this Motion, the State had received information Appellant had fully discharged each of his sentences of imprisonment. The Motion concluded Appellant's revocation appeal had therefore been rendered moot. The Court took the Motion to Dismiss under advisement and rescheduled oral argument for December 9, 1999. On December 3, 1999, Appellant's counsel filed a Notice herein stating her inquiries revealed Appellant had remained upon his appeal bond and was still appearing in the District Court upon the two cases at issue

in this appeal. The Court found the Motion to Dismiss should be overruled. Oral argument therefore proceeded on December 9, 1999, and the Court duly considered Appellant's two propositions of error raised upon appeal, to wit:

Proposition I

The trial court lacked jurisdiction to revoke Appellant's expired suspended sentences because the State failed to file the jurisdictional, unresolved application to revoke suspended sentence in either case.

Proposition II

The trial court erred in denying Appellant's request to testify on his own behalf at his revocation hearing in violation of his constitutional rights.

After hearing oral argument and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of four (4) to zero (0), we order the December 2, 1998, revocation order vacated. The record reveals there were no outstanding, unadjudicated revocation applications pending at the time the District Court entered its December 2, 1998 order of revocation.¹ Before a District Court can revoke a suspended sentence 22 O.S.Supp.1998, § 991b, requires the State to file "a petition setting forth the grounds for such revocation." See *Walker v. State*, 1989 OK CR 65, ¶ 7, 780 P.2d 1181, 1183 (revocation order reversed where order was based upon a plea of guilty to a non-existent application to revoke, and holding that without an application, district court was without jurisdiction to revoke the suspended sentence).

IT IS THEREFORE THE ORDER OF THIS COURT that the State's December 1, 1999 "Motion to Dismiss Appeal as Moot" is **DENIED**.

IT IS THE FURTHER ORDER OF THIS COURT that the December 2, 1998 order of the District Court of Oklahoma County revoking Appellant's five-

¹ The appeal record indicates the last application to revoke in CF-89-6043 was filed on February 25, 1991, and adjudicated on July 23, 1993. In CF-93-6349 the record reveals an Application to Revoke was last filed on November 8, 1996, and adjudicated on February 4, 1997.

year suspended sentences in Case Nos. CF-89-6043 and CF-93-6349 should be, and hereby is, **VACATED AND SET ASIDE**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 10th day of December, 1999.



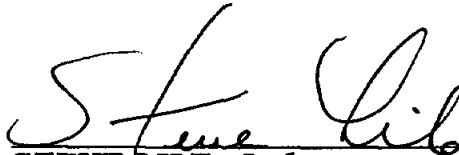
RETA M. STRUBHAR, Presiding Judge

NOT PARTICIPATING

GARY L. LUMPKIN, Vice Presiding Judge

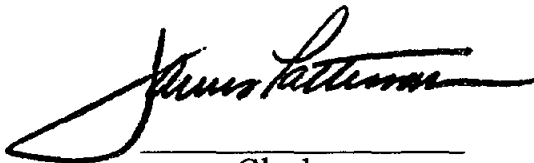


CHARLES A. JOHNSON, Judge

CHARLES S. CHAPEL, Judge

STEVE LILE, Judge

ATTEST:



Clerk

RC