

ORIGINAL



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

KATLIN MAYE FORD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. RE-2020-452

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

SEP 30 2021

SUMMARY OPINION

**JOHN D. HADDEN
CLERK**

LUMPKIN, JUDGE:

Katlin Maye Ford appeals from the order of the District Court of Carter County revoking her suspended sentence in Case No. CF-2018-18. Appellant pled guilty to Assault and Battery with a Dangerous Weapon, in violation of 21 O.S.2011 § 645, and was sentenced to ten years incarceration, all suspended.

On October 23, 2018, the State filed an application to vacate order suspending execution of Appellant's suspended sentence in CF-2018-18, alleging Appellant failed to pay restitution as ordered. On November 21, 2018, Appellant, *pro se*, waived her statutory right to an attorney and stipulated that she had failed to pay restitution as ordered. Following Appellant's stipulation, the case was continued

for sentencing to allow Appellant to come into compliance. On June 24, 2020, the District Court revoked three years of Appellant's ten year sentence.

It is from the revocation of this suspended sentence that Appellant now appeals, raising the following propositions of error:

1. Appellant was denied her right to due process when the court failed to appoint counsel or obtain a valid waiver of counsel;
2. Appellant was denied her right to due process when the court denied her request for court-appointed counsel; and
3. The court abused its discretion when it revoked Appellant's suspended sentence because any failure to pay restitution was not willful.

ANALYSIS

In Proposition I, Appellant asserts that the trial court failed to obtain a valid waiver of her statutory right to counsel. "The person whose suspended sentence is being considered for revocation at the hearing shall have the right to be represented by counsel." 22 O.S.Supp.2018, § 991b(F). "The right to counsel may be waived if done knowingly and voluntarily, but waiver will not be lightly presumed. The trial judge must indulge every reasonable

presumption against waiver.” *Painter v. State*, 1988 OK CR 224, ¶10, 762 P.2d 990, 992 (citations omitted).

This Court reviews the trial court’s decision regarding the defendant’s waiver of counsel for an abuse of discretion. *Mathis v. State*, 2012 OK CR 1, ¶ 18, 271 P.3d 67, 75; *Parker v. State*, 1976 OK CR 293, ¶ 9, 556 P.2d 1298, 1301. This standard demands that Appellant prove the lower court came to “a clearly erroneous conclusion... one that is clearly against the logic and effects of the facts presented.” *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. “Whether there has been a valid waiver of right to counsel is to be determined from the total circumstances of the individual case including background, experience and conduct of the accused.” *Braun v. State*, 1995 OK CR 42, ¶ 12, 909 P.2d 783, 788 (citations omitted).

All that is required for an effective election for self-representation is that the defendant have full knowledge or adequate warning concerning this right and a clear intent to exercise it. This is so the record will establish that he knows what he is doing and his choice is made with eyes wide open.

Lay v. State, 2008 OK CR 7, ¶ 10, 179 P.3d 615, 620 (citations omitted), *abrogated on other grounds*, *Harmon v. State*, 2011 OK CR 6, ¶ 57-58, 248 P.3d 938-39.

Notably, this Court has not imposed a “list of factors or specific warnings that must be checked off by the trial court in this context.” *Mathis*, 2012 OK CR 1, ¶ 15, 271 P.3d at 74 (citations omitted). However, “we will evaluate whether the defendant was adequately warned about the dangers of self-representation based upon all the circumstances of the case at issue, considering whether the defendant was made aware that this choice could quite likely work to his ultimate detriment.” *Id.* (citations omitted).

Ultimately, “we have held that the trial court must make a defendant aware of the problems of self-representation, and must establish on the record that the defendant understands that his actions in proceeding without counsel may be to his ultimate detriment.” *Edwards v. State*, 1991 OK CR 71, ¶ 10, 815 P.2d 670, 673 (citations omitted). The record in this case contains no

appropriate colloquy between Appellant and the trial court sufficient to demonstrate a knowing waiver of counsel.¹

Therefore, Appellant's stipulation to the State's Application to Vacate Order Suspending Execution of Sentence is **VACATED** and the order of the District Court of Carter County revoking Appellant's suspended judgment and sentence is **REVERSED** and **REMANDED** to the district court for further proceedings not inconsistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CARTER COUNTY
THE HONORABLE THOMAS J. BALDWIN,
ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT
REVOCATION**

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COUNSEL FOR DEFENDANT

AARON TABER
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CARTER COUNTY ANNEX #1

APPEARANCES ON APPEAL

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¹ Because Appellant's first proposition of error requires relief, the second and third propositions of error will not be addressed.

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OPINION BY: LUMPKIN, J.:

ROWLAND, P.J.: Concur

HUDSON, V.P.J.: Concur

LEWIS, J.: Concur

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