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On February 4, 2016, Appellant again entered a negotiated guilty plea to Stalking in Case No. CF-2015-537. He received a five year suspended sentence to be served consecutively with the sentence imposed in his prior case. One of the conditions of

Appellant's probation was that he receive treatment for domestic abusers.

On September 8, 2016, the State filed an application to revoke the suspended sentence imposed in CF-2014-193. The State alleged that Appellant had failed to pay probation fees and that he had failed to enroll in a treatment program for domestic abusers. On December 19, 2016, Appellant stipulated to the allegations and two years of the five year suspended sentence were revoked.

On April 4, 2019, the State filed amended applications to revoke the suspended sentences in both cases. The State alleged that Appellant had failed to report to his probation officer, failed to pay fees and restitution, failed to attend treatment for domestic abusers, that he consumed alcohol and committed the new offenses of possession of drug paraphernalia and public intoxication. On May 20, 2019, a hearing on the applications was held before the Honorable Paul K. Woodward, District Judge. Judge Woodward found that Appellant failed to report to his probation officer, failed to enroll in treatment for domestic abusers and that he had possessed drug paraphernalia, consumed alcohol and had been intoxicated in public. Appellant's suspended sentences were revoked in full.

ANALYSIS

At a hearing where the State seeks revocation of a suspended sentence, the question is whether the suspended portion of the sentence imposed should be executed, and the court makes a factual determination as to whether the terms of the suspension order have been violated. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The violation “need be proven only by a preponderance of the evidence.” *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. A trial court’s decision to revoke a suspended sentence should not be overturned absent a finding of an abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

In his first proposition of error, Appellant takes issue with the proceedings regarding his competency. Rule 2.1(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020),

limits the scope of review in a revocation appeal to “the validity of the revocation order.” Any challenge to the competency proceedings should have been raised in a certiorari appeal. Proposition One is not properly before the Court and is denied.

In his second and third propositions of error, Appellant asserts violations of the “20-day rule.” 22 O.S.Supp.2019, § 991b(a) requires the hearing on a motion to revoke a suspended sentence to be held within twenty days of the “entry of the plea of not guilty to the petition, unless waived by both the state and the defendant.” Here, as far as the record discloses, Appellant never entered a plea to the petition and therefore the rule was never triggered. Independently, we have held that “a defendant cannot acquiesce in the delay of the hearing and/or participate in the continuance of the hearing and then claim that he is entitled to relief because the court did not abide by the 20-day time limitation.” *Grimes v. State*, 2011 OK CR 16, ¶ 7, 251 P.3d 749, 753. At a minimum, Appellant acquiesced in the continuation of the cases. For these reasons, Propositions Two and Three are denied.

In his fourth proposition of error, Appellant contends the revocation order issued in Case No. CF-2014-193 improperly revoked

more time than remained on the original sentence. We agree. At the conclusion of the revocation hearing, the court announced it was revoking each case “in full.” However, the written order sentenced Appellant to five years in prison. Appellant did not have five years remaining on this sentence because two years had previously been revoked. We construe Appellant’s pleading as a request for an order nunc pro tunc. Accordingly, we remand Case No. CF-2014-193 to the District Court of Garfield County with instructions to correct the revocation order to conform to the sentence pronounced at the revocation hearing.

In his fifth proposition of error, Appellant contends the evidence was insufficient to support the revocations. We disagree. As previously noted, proof by a preponderance is sufficient. *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d at 556. “[P]reponderance simply means the greater weight of evidence.” *Queen v. State*, 1925 OK CR 597, 35 Okl.Cr. 412, 250 P. 935, 935. The State called three witnesses at the revocation hearing, two Enid police officers and Appellant’s parole supervisor. Although the testimony of the State’s witnesses was often in conflict with that of Appellant, credibility determinations are outside our bailiwick. *See State v. Kudron*, 1991

OK CR 92, ¶ 19, 816 P.2d 567, 570-71 (“the credibility of witnesses and the weight given their testimony is within the exclusive province of the trier of fact, who may believe or disbelieve the witnesses as it desires”). The testimony of the State’s witnesses, if believed, easily meets the preponderance standard. Proposition Five is denied.

In his sixth proposition of error, Appellant contends revocation in full in Case No. CF-2015-537 was excessive. We disagree. “Where the evidence tends in any degree to support the action of the trial court in revoking a suspended sentence, the trial court’s ruling should not be disturbed.” *Gibson v. State*, 1975 OK CR 40, ¶ 3, 532 P.2d 853, 854. The evidence presented at the revocation hearing demonstrated, by at least a preponderance, that Appellant violated the conditions of his probation and that he made no bona fide effort to do otherwise. Given these circumstances, the district court did not abuse its discretion in revoking the suspended sentence in full. Proposition Six is denied.

In his final proposition of error, Appellant contends he was deprived of a fair revocation hearing by the cumulative effect of various errors. Apart from the scrivener’s error in the order of

revocation in Case No. CF-2014-193, we have found no other error.
Proposition Seven is denied.

DECISION

The order of the District Court of Garfield County revoking Appellant's suspended judgment and sentence in Case No. CF-2014-193 is **AFFIRMED**. The case is **REMANDED** to the District Court for correction of the revocation order. The order of the District Court of Garfield County revoking Appellant's suspended judgment and sentence in Case No. CF-2015-537 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2020), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY THE HONORABLE PAUL K. WOODWARD, DISTRICT JUDGE

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LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J: Concur

RA/F