

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOSE ABRAHAM SANCHEZ,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2019-683

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 21 2021

JOHN D. HADDEN
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

Appellant appeals from the revocation of his suspended sentence in Cleveland County District Court Case No. CF-2009-183.

On June 1, 2012, Appellant was sentenced to five years imprisonment, with all but four weekends suspended.¹ On March 21,

¹ On February 11, 2009, Appellant was charged in Cleveland County District Court with Unlawful Possession of a Controlled Dangerous Drug, in violation of 63 O.S.Supp.2017, § 2-402 (B)(1) (Felony) (Count I), Operating a Motor Vehicle While Under the Influence of Alcohol, in violation of 47 O.S.Supp.2018, § 11-902 (Felony) (Count II), Unlawful Possession of Paraphernalia, in violation of 63 O.S.2011, § 2-405 (B) (Count III), Transportation of Beer in an Opened Container, in violation of 21 O.S.2011, § 1220 (Count IV), and Operating a Motor Vehicle While Under Suspension, Revocation, or Cancellation, in violation of 47 O.S.Supp.2020, § 6-303 (B) (Count V), in Case No. CF-2009-183. Appellant entered a plea of guilty and the trial court placed Appellant on probation and deferred judgment for a period of five years. On September 23, 2010, the State filed a Motion to Accelerate alleging Appellant failed to report, pay his probation fees, pay his court costs, and complete his evaluation and community service. The trial court accelerated Appellant's Count I and II sentences. Appellant was

2017, the State filed an Amended Motion to Revoke Suspended Sentence alleging Appellant failed to report, complete substance abuse evaluation, complete community service, complete a victim impact panel, complete DUI school, and complete four weekends in the county jail. On August 7, 2019, the State filed a Second Amended Motion to Revoke Suspended Sentence further alleging Appellant committed the new crimes Possession of CDS with Intent to Distribute (Count 1), Possession of a Firearm AFCE (Count 2), Possession of a Firearm with a Defaced Serial Number (Count 3), Possession of an Offensive Weapon (Count 4), and Concealing Stolen Property (Count 5) as alleged in Oklahoma County District Court Case No. CF-2019-2742. Following a revocation hearing the Honorable Lori Walkley, District Judge, revoked what remained of Appellant's five-year suspended sentence. This was Appellant's first revocation in this case.

Judge Walkley's decision will not be disturbed absent an abuse thereof. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. "An 'abuse of discretion' has been defined by this Court as a 'clearly

sentenced to five years imprisonment, with all but four weekends suspended, on both Counts I and II. The sentences were ordered to be served concurrently.

erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application’.” *Walker v. State*, 1989 OK CR 65, ¶ 5, 780 P.2d 1181, 1183.

Appellant argues and the State concedes that consideration of the alleged new crime probation violations was inappropriate in this case because the new crimes occurred after Appellant’s suspended sentence had expired. Citing *Frazier v. State*, 1989 OK CR 78, ¶¶ 2-6, 793 P.2d 1365, 1365–66, Appellant notes that a trial court is prohibited from revoking a probationer’s suspended sentence based on a probation violation that occurred after the suspended sentence has expired. Appellant was convicted and sentenced on May 24, 2012, to five years imprisonment with all but four weekends suspended. Appellant’s suspended sentence expired on May 23, 2017. The crimes alleged in Case No. CF-2019-2742 occurred on June 19, 2019, which is over two years beyond the expiration of Appellant’s probationary term. This claim has merit.

Relying on 22 O.S.2011, § 991b(B), Appellant next argues that aside from the new crime violations the State only proved he committed three “technical violations” which should have limited any

revocation to six months. The State concedes the merit of this argument as well. 22 O.S.2011, § 991b(B) limits revocation based on technical violations to six months in jail as long as the violations do not appear on the list of exceptions provided by 22 O.S.2011 § 991b(C). None of the exceptions to the six-month limit apply to Appellant's circumstances. This claim also has merit.

The evidence in this case was sufficient to prove three technical violations occurred by a preponderance of the evidence. *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. This justified the revocation of up to six months of Appellant's suspended sentence. 22 O.S.2011, § 991b. Judge Walkley's revocation of five years was not justified in this case. *Walker*, 1989 OK CR 65, ¶ 5, 780 P.2d at 1183; 22 O.S.2011, § 991b. The trial court abused its discretion by revoking Appellant's five-year suspended sentence in whole based on the three technical violations proven in this case. *Id.*

DECISION

The revocation of Appellant's suspended sentence in Cleveland County District Court Case No. CF-2009-183 is **AFFIRMED** and this matter is **REMANDED** to the District Court of Cleveland County for issuance of an amended revocation order **MODIFYING** the revocation

to six months. 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 filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND
COUNTY, THE HONORABLE LORI WALKLEY, DISTRICT JUDGE**

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OPINION BY: LEWIS, J.

KUEHN, P.J.: Concur
ROWLAND, V.P.J.: Concur
LUMPKIN, J.: Concur in Result
HUDSON, J.: Concur

RA/F