

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

**JAMES ELLIOTT ADKINS, JR.,**

**Appellant,**

**-vs.-**

**THE STATE OF OKLAHOMA,**

**Appellee.**

**NOT FOR PUBLICATION**

**No. RE-2013-409**

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

**JUL - 1 2014**

**SUMMARY OPINION**

**A. JOHNSON, JUDGE:**

**MICHAEL S. RICHIE  
CLERK**

In the District Court of Cherokee County, Appellant, James Elliott Adkins, Jr., while represented by counsel, entered pleas of nolo contendere to four misdemeanor charges: the first on Count 3 in case number CF-2009-200, the second and third on Counts 1 and 2 respectively in CF-2010-467, and the fourth on Count 1 in CM-2010-1342. On October 11, 2011, the Honorable Holli Wells, Special Judge, sentenced Adkins on each count to a one-year term of confinement in the custody of the Cherokee County Sheriff ordering those four terms to be served consecutively to one another, but suspending the execution of the four sentences on written rules of probation. The parties agree that Judge Wells imposed these four consecutive one-year terms in the sequence listed above.

On April 17, 2013, the parties appeared before Judge Wells for an evidentiary hearing on the State's motion to revoke suspension. The initial revocation motion was filed only in CM-2010-1342 on December 23, 2011. More than one year later the State filed a motion seeking revocation in CF-2010-467. In an Amended Motion to Revoke filed only in CF-2010-467 on April 3, 2013, the State alleged the same probation violations alleged in the initial Motion to Revoke of December 23, 2011, filed in CM-2010-1342. The Amended

Motion set forth a subsequent probation violation alleged to have occurred on February 20, 2013. At the conclusion of the revocation hearing on the initial Motion from CM-2010-1342 and the Amended Motion from CF-2010-467, Judge Wells revoked in full the suspension order entered in CM-2010-1342 and revoked a six-month portion of the suspension order entered in CF-2010-467.

In entering partial revocation in CF-2010-467, Judge Wells did not specify whether that six-month revocation was from the sentence entered in Count 1 or Count 2 in that case. Judge Wells ordered that Appellant was not to receive good time credits while serving the one year and six month periods that were the subject of the revocation order and directed that he serve that entire period of confinement as "flat time."

Adkins now appeals the final orders of revocation. He raises the following issues:

- (1) whether the trial court erred by revoking suspended sentences that Adkins had not yet begun to serve; and
- (2) whether the trial court erred by ordering that Adkins could not receive good time credits.

**1.**

This case raises the question of whether a trial court has the authority to revoke the suspension of a sentence that the defendant has not yet begun to serve.

This Court has definitively answered that question in the affirmative. In *Demry v. State*, 1999 OK CR 31, ¶¶ 11-12, 986 P.2d 1145, 1147, we said

In the first proposition, Appellant argues that since he was serving only the suspended portion of the Judgment and Sentence in CM-97-2802, the trial court did not have jurisdiction to revoke the

suspended sentences in the three case he was not yet serving. We disagree.

This Court has previously affirmed a trial court's order revoking consecutive suspended sentences finding the revocations to be within the trial court's discretion. See *Medlock v. State*, 1972 OK CR 135, ¶ 2, 497 P.2d 446. A suspended sentence is a matter of grace. *In re Hall*, 78 Okla.Crim. 83, 143 P.2d 833. Until that suspended sentence has been fully served, a defendant remains under the jurisdiction of the trial court with the sentence subject to revocation. *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 452. As long as an application to revoke is filed before the expiration of a suspended sentence, that sentence is subject to revocation. *Id.* Appellant's first proposition is denied.

Appellant makes no claim that either of the sentences revoked by Judge Wells had been fully served. He acknowledges the holding of *Demry*, but challenges its soundness and asks this Court to overrule that decision to the extent it serves to vest jurisdiction in the trial court "over the subject of a legal matter not yet arisen, i.e., a consecutive sentence which itself has not yet begun, as distinguished from the person of the defendant."

We decline to do so. Appellant has established neither that *Demry* was improperly decided<sup>1</sup> nor that *Demry* can be legally or factually distinguishable from this case.

## 2.

We do find merit in Adkins's second proposition of error, which claims Judge Wells exceeded her authority when directing that Adkins could not receive good-time credits while serving the terms of confinement executed by her order of revocation. Adkins correctly asserts that under state law, the obligation to administer an executed sentence falls on the executive branch of

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<sup>1</sup> Indeed, the holding in *Demry* appears to be in accord with a majority of American jurisdictions that have considered the issue. See Lee R. Russ, Annotation, *Power of Court to Revoke Probation for Acts Committed after Imposition of Sentence but Prior to Commencement of Probation Term*, 22 A.L.R.4th 755 (1983).

government. Absent valid legislation to the contrary, a judge cannot direct the manner custodial sentences are administered. See *Washington v. Dep't of Corr.*, 2002 OK CR 25, ¶ 4, 49 P.3d 754, 754; *Fields v. Driesel*, 1997 OK CR 33, ¶¶ 25, 29, & 35-38, 941 P.2d 1000, 1006-08. Consequently, the District Court erred in attempting to limit the Cherokee County Sheriff from affording Adkins the opportunity to receive good-time credits toward completion of his sentences.

### **DECISION**

The District Court's order of April 17, 2013 revoking the suspension order in Case No. CM-2010-1342 and revoking a six-month portion of the suspension order in Case No. CF-2010-467 is **AFFIRMED; PROVIDED** the District Court, within ten days of receipt of mandate, shall enter a proper order of revocation deleting court directives to the Cherokee County Sheriff concerning the receipt of good time credits by Adkins in the discharge of the executed sentences. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CHEROKEE COUNTY  
THE HONORABLE HOLLI WELLS, SPECIAL JUDGE

#### **APPEARANCES AT TRIAL**

ANGELA JONES  
218 SOUTH MUSKOGEE AVENUE  
TAHLEQUAH, OKLAHOMA 74464  
ATTORNEY FOR DEFENDANT

#### **APPEARANCES ON APPEAL**

TERRY J. HULL  
OKLA. INDIGENT DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OKLAHOMA 73070  
ATTORNEY FOR APPELLANT

B.J. BAKER  
ASSISTANT DISTRICT ATTORNEY  
213 WEST DELAWARE  
TAHLEQUAH, OKLAHOMA 74464  
ATTORNEY FOR STATE OF OKLAHOMA

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA  
DONALD D. SELF  
ASSISTANT ATTORNEY GENERAL  
313 NORTHEAST 21ST STREET  
OKLAHOMA CITY, OKLAHOMA 73105  
ATTORNEYS FOR APPELLEE

**OPINION BY: A. JOHNSON, J.**  
LEWIS, P.J.: Concur  
SMITH, V.P.J.: Concur  
LUMPKIN, J.: Concur in Results  
C. JOHNSON, J.: Concur

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