

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

JACQUELIN CLARIECE ALEXANDER, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

**NOT FOR PUBLICATION**

Case No. RE-2010-457

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

OCT 21 2011

**MICHAEL S. RICHIE**  
CLERK

**SUMMARY OPINION**

**C. JOHNSON, JUDGE:**

On October 25, 2006, Appellant, Jacquelin Clariece Alexander, represented by counsel, entered a plea of guilty in Tulsa County District Court Case No. CF-2006-4871, to Possession of a Controlled Dangerous Substance (Cocaine Base), Count I, and Possession of Drug Paraphernalia, Count II. Pursuant to a plea agreement, Alexander was sentenced to three years incarceration on Count I, and one year incarceration on Count II. Both sentences were suspended and ordered to run concurrently.

On May 27, 2008, the State filed an application to revoke Alexander's suspended sentence.<sup>1</sup> On April 16, 2010, a hearing was held before the Honorable William C. Kellough, District Judge. At the conclusion of the hearing, Alexander's suspended sentences were revoked in full. From that order of revocation, Alexander has perfected this appeal.

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<sup>1</sup> The State alleged Alexander had failed to report to Diversion Services, tested positive for cocaine, failed to obtain full time employment, failed to pay probation fees, failed to complete drug treatment at Tulsa Women and Children's Center, failed to attend her pre-treatment class with Diversion Services, failed to enroll in GED classes, failed to attend support group meetings, and failed to complete drug treatment at Tulsa Women and Children's Center a second time. (O.R. 67 - 68)

In her first assignment of error, Alexander asserts the trial court lost jurisdiction to hear the State's motion to revoke her suspended sentence in Count II because her sentence had expired before the State filed its application to revoke.

We find merit in Alexander's argument. A trial court may only revoke a suspended sentence which has already expired if the State filed an application to revoke prior to the expiration of the suspended sentence. See *Avance v. Mills*, 1972 OK CR 89, ¶14, 495 P.2d 828, 831. If the State wanted to ensure Alexander's compliance with her promise to complete community service, it should not have dismissed the first application to revoke. *Id.*, at ¶14, 495 P.2d at 831. Because the second application to revoke was filed after Alexander's suspended sentence had expired, the trial court no longer had jurisdiction over the sentence. Therefore, the trial court's order of revocation in Count II is **REVERSED** and **REMANDED** with instructions to **DISMISS**.

In Alexander's final proposition of error, she argues she was severely prejudiced in the revocation proceedings by ineffective assistance of counsel. Under long-standing precedent, a defendant will not prevail on a claim of ineffective assistance of counsel without showing counsel's representation fell below an objective standard of reasonableness, and a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674. In other words, even if a defendant is able to

show deficient performance, the defendant will not be entitled to relief unless the defendant can show the deficiency was prejudicial to the defense. *Andrew v. State*, 2007 OK CR 23, ¶96, 164 P.3d 176, 198.

In the case at bar, we find defense counsel's performance fell below the prevailing professional standard of reasonableness.<sup>2</sup> Therefore, the only question is whether counsel's performance prejudiced Alexander to the extent that the result of the proceeding would have been different. *Rochon v. State*, 2008 OK CR 1, ¶15, 176 P.3d 362, 365. After a review of the record, we find the evidence of Alexander's probation violations to be overwhelming and uncontested. Alexander's proffered evidence mostly concerns mitigating evidence of rehabilitation and accomplishments she completed after the application to revoke had been filed. We do not find that the result of the proceeding would have been different.

### **DECISION**

The order of the District Court of Tulsa County revoking Jacquelin Clariece Alexander's suspended sentence in Count I of Case No. CF-2006-4871 is **AFFIRMED**. The order of the District Court of Tulsa County revoking Jacquelin Clariece Alexander's suspended sentence in Count II of Case No. CF-2006-4871 is **REVERSED** and **REMANDED** with instructions to **DISMISS**. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

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<sup>2</sup> Alexander's motion to supplement appeal record is GRANTED.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE WILLIAM C. KELLOUGH, DISTRICT JUDGE**

**ATTORNEYS AT TRIAL**

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ATTORNEY AT LAW  
TULSA, OKLAHOMA  
ATTORNEY FOR APPELLANT

JACK THORP  
ASSISTANT DISTRICT ATTORNEY  
TULSA COUNTY  
TULSA, OKLAHOMA  
ATTORNEY FOR APPELLEE

**ATTORNEYS ON APPEAL**

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ATTORNEY FOR APPELEE

**OPINION BY: C. JOHNSON, J.:**

A. JOHNSON, P.J.: CONCUR IN RESULTS  
LEWIS, V.P.J.: CONCUR IN RESULTS  
LUMPKIN, J.: CONCUR IN RESULTS  
SMITH, J.: CONCUR

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