

APR 20 2004

MICHAEL S. RICHIE
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DESIRAY JAIBAI ALLEN,)
)
Appellant,)
)
-vs.-)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

No. RE-2003-640

**ORDER REVERSING DISTRICT COURT'S
ORDER REVOKING SUSPENDED SENTENCE**

Appellant, through counsel, Lee Ann Jones Peters, appeals to this Court from an order revoking his one year suspended sentence in Custer County District Court, Case No. CM-01-361. On November 12, 2002, the State filed an Application to Revoke Appellant suspended sentence. Appellant entered a plea of not guilty to the application on December 6, 2002. The revocation hearing was held on April 24, 2003, before the Honorable Jill C. Weedon, Special Judge. On May 30, 2003, Appellant's sentence was revoked in full.

On June 30, 2003, Appellant filed a Petition in Error in this Court appealing the revocation order of the District Court. On December 12, 2003, Appellant filed his Brief in Chief, urging three propositions of error.

On February 10, 2004, Appellee filed its Response to Appellant's brief. Within its pleading the Attorney General has conceded the error. Appellee agrees the trial court was without jurisdiction to entertain Appellant's revocation hearing since Appellant's waiver of the twenty-day period was not executed until that period had expired. See 22 O.S.2001, Section 991b(A).

In light of the foregoing argument, the existing record before us, the authorities cited by the parties herein, and the State's confession of error, this Court **FINDS** it was error for the District Court to enter an order vacating Appellant's suspended sentence. **IT IS THEREFORE THE ORDER OF THIS**

Court order of May 30, 2003, revoking Appellant's suspended sentence in Case No. CM-01-361 is **VACATED** and due to the fact the period of suspension has now expired, the Application to Revoke is **DISMISSED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 30th day of April, 2004.



CHARLES A. JOHNSON, Presiding Judge

Steve Lile Dismiss - Appellant
Steve Lile vacated the 30 day rule.

STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:



Clerk