

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STEVEN B. BAKER,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2010-9

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 23 2011

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

C. JOHNSON, JUDGE:

In the District Court of Tulsa County, Case No. CF-2007-5252, Steven B. Baker, Appellant, while represented by counsel, entered pleas of guilty to the misdemeanor of Resisting an Officer and to the felony offenses of Assault with a Dangerous Weapon and Possession of a Controlled Drug (Cocaine Base). Pursuant to a plea agreement, the Honorable Dana Kuehn, District Judge, on January 14, 2008, sentenced Appellant to concurrent terms of five (5) years imprisonment on each of the felony counts and one (1) year on the misdemeanor offense. Judge Kuehn suspended execution of these sentences conditioned on Appellant's compliance with written rules of probation.

On February 27, 2009, following an evidentiary hearing on an Application to Revoke Suspended Sentence filed by the State, Judge Kuehn sanctioned Appellant for violating probation by ordering him confined in the county jail for forty-five (45) days. Thereafter, on November 12, 2009, the State filed a second Application to Revoke Suspended Sentence. This Application alleged Appellant committed another probation violation by perpetrating the misdemeanor of Domestic Assault and Battery on Dorothy Taylor. An evidentiary hearing was held on this second Application on December 22,

2009, before the Honorable Kurt G. Glassco, District Judge, at the conclusion of which, the District Court revoked Appellant's two five-year suspended sentences in their entirety.

Appellant now appeals that final order of revocation and raises the following propositions of error:

1. The District Court lacked the authority to revoke all five years of Appellant's suspended sentence. Appellant's sentence must be reduced by the 45-day sanction served in custody as a result of a previous Application to Revoke.
2. Appellant's sentence is excessive and should be modified.

In his first proposition, Appellant argues that the District Court's sanction on the State's first Application for Revocation, imposed in February of 2009 for a period of forty-five days, discharged the equivalent period of imprisonment from Appellant's sentences. Accordingly, Appellant concludes that Judge Glasco's order directing execution of the entire five-year term of Appellant's concurrent sentences exceeded the amount of time that Appellant had left to serve on those sentences. The State's Answer Brief concedes this point. The Court **FINDS** Appellant is entitled to relief under this proposition as hereinafter set forth.

The Court does not find merit as to Appellant's remaining proposition of error. In that proposition, Appellant urges the revocation of the entirety of the suspension order was excessive and therefore an abuse of discretion. In concluding revocation in full was excessive, Appellant draws on the circumstance that Appellant suffers from a drug addiction, was prevented from "undertak[ing] any kind of medically supervised drug treatment" (Appellant's Br. 5), and will be unlikely to receive any treatment while incarcerated.

“The decision of the trial court to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and will not be disturbed absent an abuse thereof.” *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. As previously noted, the revocation order appealed is not the first time Appellant was found guilty of violating his probation. Moreover, Appellant’s probation violation was for an assault occurring while he was still on probation for a previous offense of assault.¹ On such a record, the District Court’s revocation decision does not meet the test for an abuse of discretion, as it was not clearly against the logic and effect of the facts before the District Court.²

DECISION

The December 22, 2009, final order of the District Court of Tulsa County, revoking the entirety of the orders suspending execution of the felony sentences imposed against Steven B. Baker, Appellant, in Case No. CF-2007-5252, is **AFFIRMED**, PROVIDED HOWEVER, the District Court, on receipt of mandate, shall enter an amended order of revocation reflecting its previous execution of a forty-five (45) day portion of Appellant’s concurrent sentences and directing credit for such towards Appellant’s discharge of those sentences. The District Court shall enter the amended order of revocation within sixty (60) days from receipt of mandate and file a certified copy thereof with the Clerk of this Court in addition to delivering certified copies to counsel for the parties; to Jim Rabon, Sentencing Administrator for the Oklahoma Department of

¹ In *Demry v. State*, 1999 OK CR 31, ¶ 21, 986 P.2d 1145, 1148, this Court recognized the seriousness of repeating the very crime for which one had been placed on probation.

² “An ‘abuse of discretion’ has been defined by this Court as a ‘clearly 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.

Corrections; and to the records officer at Appellant's place of confinement. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE KURT G. GLASSCO, DISTRICT JUDGE

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OPINION BY: C. JOHNSON, J.
A. JOHNSON, P.J.: CONCURS
LEWIS, V.P.J.: CONCURS
LUMPKIN, J.: CONCURS IN RESULTS
SMITH, J.: CONCURS

RB

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