

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUL 31 2002
JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

BILLY JOE BALDWIN,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE 2001-1070

**ORDER GRANTING APPEAL, MODIFYING SENTENCE
AND REMANDING MATTER TO DISTRICT COURT
OF LINCOLN COUNTY FOR FURTHER PROCEEDINGS**

Appellant pled guilty in the District Court of Lincoln County January 21, 1999, in Case No. CF-98-64 to Knowingly Concealing Stolen Property, in Case No. CF-98-91 to Feloniously Pointing Weapon, and in Case No. CF-98-96 to Unauthorized Use of Vehicle, and in each case Appellant was sentenced to five years with all except the first two years suspended, to be served concurrently. The State filed a Motion to Revoke Suspended Sentence in each case on June 28, 2001.

Following a hearing August 29, 2001, Appellant having stipulated to the violation of his suspended sentences, the trial judge found Appellant violated the terms and conditions of his probation in each case and revoked in part. Appellant was ordered to serve three years, one year for each case to run consecutively. The trial judge also ordered the last two years of Appellant's sentences to be suspended in each case. Appellant appeals from the revocation of his suspended sentences.

On appeal, Appellant raises the following proposition of error: "The orders revoking suspended sentence in CF-1998-64, CF-1998-91, and CF-1998-96, must be modified because the terms imposed therein violate Mr. Baldwin's statutory rights and constitutional protections against double jeopardy." The State responded: "The Defendant's contention has merit; the orders revoking suspended sentence in CF-1998-64, CF-1998-91 and CF-1998-96, should be modified to run concurrently."

We agree. As we held in *Marutzky v. State*, 1973 OK CR 398, ¶ 5, 514 P.2d 430, "[t]he consequence of judicial revocation is to execute a penalty previously imposed in the judgment and sentence." **THEREFORE**, the revocation of Appellant's suspended sentences are **AFFIRMED**, but the sentences are **MODIFIED** to one year revoked with the remainder suspended, and are to run **CONCURRENTLY**, not consecutively.

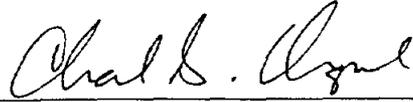
This matter is **REMANDED** to the District Court of Lincoln County for further proceedings consistent with this Order. The Clerk of this Court is directed to transmit a copy of this Order to the Honorable Paul M. Vassar, District Judge, District Court of Lincoln County, as well as to counsel of record.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 31st day
of July, 2002.

~~NOT PARTICIPATING~~
GARY L. LUMPKIN, Presiding Judge

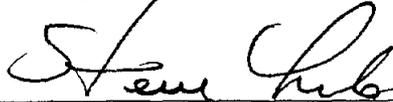
~~NOT PARTICIPATING~~
CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

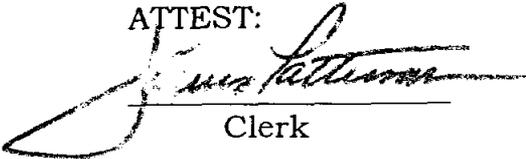


RETA M. STRUBHAR, Judge



STEVE LILE, Judge

ATTEST:


Clerk