



After considering the evidence and hearing arguments, Judge Gillert found Appellant violated probation and revoked his ten year suspended sentence in full.

Appellant asserts two propositions of error in this appeal:

- I. THE DISTRICT COURT ERRED WHEN IT REVOKED A SUSPENDED SENTENCE FOR MISCONDUCT THAT OCCURRED BEFORE THE SUSPENDED SENTENCE EXISTED.
- II. COUNSEL'S ASSISTANCE WAS INEFFECTIVE.

### **ANALYSIS**

Because the State has confessed error in this appeal, we need not fully address Appellant's propositions of error. The State correctly notes that this appeal record clearly shows the District Court did not have the quantum of evidence legally required to revoke Appellant for his commission of a new crime. When the State seeks to revoke a suspended sentence on grounds the probationer has committed a new crime, the State must either (1) prove that the conviction of that crime is final; or (2) prove each element of the offense(s) alleged as a violation of probation. *Sams v. State*, 1988 OK CR 137, ¶ 6, 758 P.2d 834, 835; *Stoner v. State*, 1977 OK CR 212, ¶ 6, 566 P.2d 142, 143. It is well established that when the State chooses to prove a judgment and sentence rather than the underlying crime as a predicate for revocation of a suspended sentence, the judgment is a valid basis for revocation only if it is final. *Pickens v. State*, 1989 OK CR 58, ¶ 12, 779 P.2d 596, 598. A judgment and sentence becomes final when the defendant does not appeal within the time prescribed for direct appeal or, if the defendant perfects a direct appeal, final disposition is

made and entered by the appellate court. *Id.* The appeal record in this case is clear that the State never proved that Appellant's Judgment and Sentence in Creek County District Court Case No. CF-2011-92 was final; and never attempted to prove each element of the crime of Endeavoring to Manufacture Controlled Dangerous Substance, alleged as the violation of probation.

**DECISION**

Accordingly, the order of the District Court of Tulsa County revoking Appellant's ten year suspended sentence in Case No. CF-2010-2061 is **REVERSED** and the matter is **REMANDED** to the District Court for further proceedings in accordance with this decision. Appellant's motion to supplement the record and application for evidentiary hearing on Sixth Amendment claims is **MOOT**.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE TOM C. GILLERT, DISTRICT JUDGE

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**OPINION BY: LUMPKIN, J.**  
LEWIS, P.J.: CONCUR  
SMITH, V.P.J.: CONCUR  
C. JOHNSON, J.: CONCUR  
A. JOHNSON, J.: CONCUR

RA/F