

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARIO LEREKO BLACKWELL,)
)
 Appellant,)
 v.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. RE-2014-96

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN - 2 2015

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

On July 18, 2006, Appellant Blackwell was charged as a Youthful Offender with First Degree Rape in Garfield County Case No. CF-2006-417. On April 16, 2007, Blackwell, represented by counsel, stipulated that he was not amenable to treatment as a Youthful Offender and entered a guilty plea as an adult to a charge of Child Abuse. Blackwell's sentencing was deferred for five years pending completion of probation. On September 28, 2009, Blackwell stipulated to the State's Application to Accelerate his deferred sentence and he was sentenced to five years, suspended, subject to terms and conditions of probation. On June 26, 2013, the State filed an Application to Revoke Blackwell's suspended sentence alleging he violated various terms and conditions of his probation. On January 24, 2014, the District Court of Garfield County, the Honorable Tom L. Newby, Associate District Judge, revoked Blackwell's suspended sentence in full.

From this judgment and sentence, Blackwell appeals raising the following claims:

1. The trial court lacked jurisdiction to revoke Blackwell's suspended sentence because his revocation was based upon a crime he could not have committed and he was a youthful offender whose adult sentence was illegally imposed;
2. Blackwell's judgment and sentence incorrectly cite a statute which did not exist at the time he was charged and should be corrected to accurately reflect the basis of his conviction;
3. The trial court erred by revoking Blackwell's suspended sentence in full; and
4. The trial court's order revoking suspended sentence inaccurately recites findings that Blackwell violated several rules of probation although no evidence or stipulation for these findings was presented, and the order should be corrected to reflect the true state of evidence upon which the revocation was based.

The revocation of Blackwell's suspended sentences is **AFFIRMED**. This matter is **REMANDED** to the District Court for further proceedings to determine if Blackwell is entitled to credit for time served as a Youthful Offender. His request for extraordinary relief is **DENIED**.

At Proposition 1, Blackwell argues that he did not meet the statutory elements sufficient to be convicted of child abuse and therefore the trial court lacked jurisdiction to find him guilty of the charged offense. Blackwell further claims that because he was charged as a Youthful Offender, and the State did not file a motion to sentence him as an adult as required by statute, his conviction as an adult must be vacated. Recognizing that these claims challenge his underlying conviction, Blackwell argues in his reply brief that these claims "strike at the validity of the revocation order" and therefore fall within the purview of this Court's review in a revocation appeal. Blackwell also submits that because his claim is

jurisdictional, and is subject to review at any time in a collateral proceeding, this claim is properly addressed in his revocation appeal.

This Court addressed and rejected this very issue in *Tilden v. State*, 2013 OK CR 10, 306 P.3d 554. We found that the scope of review in a revocation appeal is limited to the validity of the revocation order executing the previously imposed sentence. *Tilden v. State*, 2013 OK CR 10, ¶¶ 3-4, 306 P.3d 554; Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013); *Nesbitt v. State*, 2011 OK CR 19, ¶ 5, 255 P.3d 435, 437; *Grimes v. State*, 2011 OK CR 16, ¶ 17, 251 P.3d 749, 755. Blackwell's attempt to appeal his judgment and sentence must be pursued through the procedures governing *certiorari* appeals. Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), or some other collateral proceeding designed to address such issues. We will not address Blackwell's attempted challenge to his underlying conviction.

At Proposition 2 and again at Proposition 4, Blackwell argues that the memorialization of his underlying conviction and the order revoking his suspended sentence cite to incorrect statutes and probation violations, respectively. He requests this Court issue an order correcting those alleged errors. Again, the scope of review in a revocation appeal is limited to the validity of the revocation order executing the previously imposed sentence. Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015); *Grimes v. State*, 2011 OK CR 16, ¶ 20, 251 P.3d 749, 755. Blackwell's claim constitutes a request for extraordinary relief, seeking correction of a scrivener's error. See Rule 10.1(A),

Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2015). If Blackwell believes he is entitled to issuance of an order *nunc pro tunc*, a proper request for such an order should be made directly to the District Court, prior to seeking any redress through this Court. This Court will entertain extraordinary requests for relief only when a petitioner has sought and been denied relief in the District Court. *Id.* Absent a determination by the District Court, this Court will not assume jurisdiction of an extraordinary writ, especially in a revocation appeal where our review is limited to whether or not the District Court abused its discretion in revoking all or part of a defendant's suspended sentence. The request for issuance of an order *nunc pro tunc* is **DENIED**.

At Proposition 3, Blackwell alleges that revocation of his entire suspended sentence is excessive. This Court has repeatedly held that violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden v. State*, 2013 OK CR 10, ¶10, 306 P.3d 554, 557; *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d. 744, 745. The standard of review applied to revocation proceedings is abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565; *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453; *Sparks v. State*, 1987 OK CR 247, ¶ 5, 745 P.2d 751, 752.

Blackwell's argument is two-fold. He first claims that he was never required to register as a sex offender, arguing that he pled guilty to non-sexual child abuse, which does not require sex offender registration. The appeal record in this matter does not support such a finding. Blackwell stipulated to his failure to register, and

testified at the revocation hearing that he thought that if he entered a plea to child abuse he would not be required to register as a sex offender. Despite this testimony, the judgment and sentence in this case reflects that Blackwell was convicted of sexual child abuse, which does require registration as a sex offender. Blackwell's testimony as to his understanding of the consequences of his plea is insufficient to establish that he was not required to register as a sex offender. As was noted above, if Blackwell wishes to challenge his judgment and sentence, including the recited statutory basis for his underlying conviction, he may do so by directly appealing his conviction or challenging his conviction through a proper collateral proceeding. Additionally, on May 6, 2013, Blackwell pled guilty to Failure to Register as a Sex Offender in McCurtain County Case No. CF-2012-369 and received a one year sentence.¹ There was sufficient evidence presented at the revocation hearing to support the district court's finding that Blackwell violated the terms and conditions of his probation by failing to register as a sex offender.

We find merit in Blackwell's request for day-for-day credit for the time spent in OJA custody, which he alleges should have been applied to his adult sentence. Blackwell argues that prior to entering his plea as an adult, he was in the custody of the Office of Juvenile Affairs (OJA) in his capacity as a Youthful Offender, and is entitled to day-for-day credit for time served in OJA custody, citing 10 O.S.Supp.2006, § 7306-2.10(I).² This statute reads as follows:

¹ Blackwell did not appeal that conviction and it has become final.

² This section was renumbered as 10A O.S.Supp.2009 § 2-5-210(D) effective May 21, 2009. The language in the two sections is identical.

The court **shall** grant time-served credits against the adult sentence imposed for any youthful offender transferred to the Department of Corrections. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the supervision of the Office of Juvenile Affairs, the offender shall receive day-for-day credit for the time spent in the custody or under the supervision of the Office of Juvenile Affairs. Upon commitment to the Department of Corrections, a youthful offender shall also receive other credits as provided by law for an adult inmate. (emphasis added).

Unlike an adult sentence where credit for time served is discretionary, credit toward an adult sentence for time served as a Youthful Offender in OJA custody is mandatory. Blackwell argues that he spent 118 days in OJA custody prior to entering his plea and being placed in the custody of the Oklahoma Department of Corrections (DOC). The State's response filed with this Court does not dispute Blackwell's claim that he spent time in OJA custody. The matter was not addressed at Blackwell's revocation hearing.

We are unable to determine from the appeal record in this case the exact amount of credit, if any, to which Blackwell is entitled. This matter is therefore **REMANDED** to the District Court of Garfield County for further proceedings to determine the amount of day-for-day credit for time served to which Blackwell is entitled, if any, and entry of an order memorializing those findings.

DECISION

The order of the District Court of Garfield County revoking Appellant's suspended sentence in Case No. CF-2006-417 is **AFFIRMED**. The request for issuance of an order *nunc pro tunc* is **DENIED**. This matter is **REMANDED** for further proceedings to determine the amount of credit for time served, if any, to

which Blackwell is entitled, and entry of an order memorializing the same. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY
THE HONORABLE TOM L. NEWBY, ASSOCIATE DISTRICT JUDGE

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