

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
FEB 11 2002  
JAMES W. PATTERSON  
CLERK

MARGUERIETTA E. BOONE, )  
 )  
Appellant, )  
 )  
v. )  
 )  
THE STATE OF OKLAHOMA, )  
 )  
Appellee. )

No. RE 2001-0663

**SUMMARY OPINION**  
**AFFIRMING REVOCATION OF SUSPENDED SENTENCE BUT**  
**MODIFYING SENTENCE IMPOSED AND REMANDING TO DISTRICT**  
**COURT WITH INSTRUCTIONS TO ENTER AN AMENDED**  
**JUDGMENT AND SENTENCE**

On October 2, 1997, Appellant pled guilty in the District Court of Oklahoma County, Case No. CF-97-3464, to Count 1 – Unauthorized Use of a Motor Vehicle, Count 2 – Possession of a Controlled Dangerous Substance (Cocaine) and Count 3 – Possession of Drug Paraphernalia. Appellant was given a five year suspended sentence on Counts 1 and 2 and a one year suspended sentence on Count 3. On April 15, 2001, the State filed an amended application to revoke Appellant’s suspended sentences. Following a hearing May 15, 2001, the Honorable Susan P. Caswell, District Judge, revoked Appellant’s suspended sentences for Counts 1 and 2<sup>1</sup> in full, five years, to run concurrently. Judge

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<sup>1</sup> Judge Caswell found the one year sentence for Count 3 had expired.

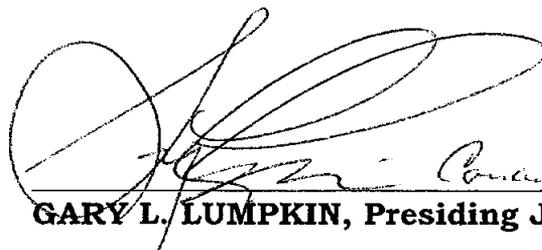
Caswell also ordered the sentences "to run consecutively with new cases". Appellant appeals from the revocation of her suspended sentence.

On appeal Appellant raised the following proposition of error: "The trial judge lacked jurisdiction to order the five year revocation sentence 'to run consecutively with new cases'." We agree. The consequence of judicial revocation is to execute a penalty previously imposed in the Judgment and Sentence. *Marutzky v. State*, 1973 OK CR 398, ¶ 5, 514 P.2d 430. In this case the trial judge did not order these sentences to be run consecutively to new sentences in the original Judgment and Sentence and, therefore, cannot impose this additional penalty upon revocation.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the revocation of Appellant's suspended sentences in the District Court of Oklahoma County, Case No. CF-97-3464, is **AFFIRMED**, but the sentence is **MODIFIED** to delete the language "to run consecutively with new cases", and the matter is **REMANDED** to the District Court with **INSTRUCTIONS** to enter an amended Judgment and Sentence.

**IT IS SO ORDERED.**

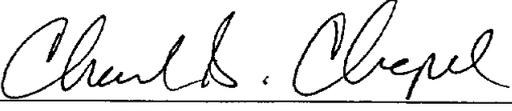
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 11<sup>th</sup> day of February, 2002.



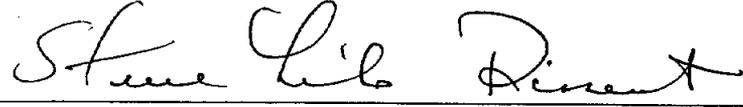
**GARY L. LUMPKIN, Presiding Judge**

*Concurrence - The  
Sentence will  
run consecutively by  
operation of law so  
my error is null*

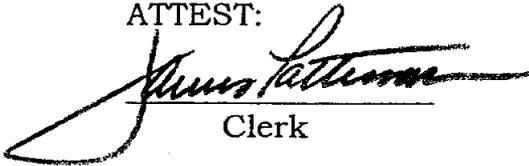
  
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**CHARLES A. JOHNSON, Vice Presiding Judge**

  
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**CHARLES S. CHAPEL, Judge**

  
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**RETA M. STRUBHAR, Judge**

  
\_\_\_\_\_  
**STEVE LILE, Judge**

ATTEST:

  
\_\_\_\_\_  
Clerk