

evidence and arguments, Judge Culver revoked Appellant's suspended life sentences in full.

Appellant filed this appeal from Judge Culver's revocation order. He asserts one proposition of error:

- I. THE DISTRICT COURT ABUSED ITS DISCRETION IN REVOKING MR. BRADBERRY'S SUSPENDED SENTENCES IN FULL. BECAUSE THE REVOCATION WAS EXCESSIVE, THIS COURT SHOULD FAVORABLY MODIFY THE ORDER REVOKING THE SUSPENDED SENTENCES.

ANALYSIS

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. In addressing a claim of excessiveness of a revocation, this Court determined that whether or not the revoking court revokes in whole or in part is left to the sound discretion of that court. *Phipps v. State*, 1974 OK CR 219, ¶¶ 11, 12, 529 P.2d 998, 1000.

In revoking Appellant's suspended life sentences in full, the District Court noted that Appellant has a lengthy criminal record; that he has a history of not reporting; that he has a history of not registering; and that he has a history of not doing the things he is supposed to do. However, much of that history occurred before Appellant entered his plea of guilty, was convicted, and was given the suspended life sentences in this case. Appellant was on probation in this case for less than two weeks when the episode began that resulted in violations causing full revocation of the suspended life sentences,

and the episode was apparently facilitated by Appellant's attempt to commit suicide. We find that the District Court abused its discretion by revoking Appellant's suspended life sentences in full for the violations alleged, the most important being a failure to report. We further find that the District Court's order should be modified to revocation of ten years of the suspended life sentences.

DECISION

The order of the District Court of Ottawa County revoking Appellant's suspended life sentences in full in Case No. CF-2012-367 is **REVERSED** and this matter is **REMANDED** to the District Court to modify the order to revocation of ten years of Appellant's suspended life sentences.

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 OTTAWA COUNTY
THE HONORABLE WILLIAM CULVER, SPECIAL JUDGE

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

RB/F

LUMPKIN, JUDGE: DISSENT

I respectfully dissent to the modification of the revocation of Appellant's sentences. This Court reviews the District Court's decision to revoke suspended sentences for an abuse of discretion. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557. In conducting this review, this Court should not supplant the District Court's decision with its own. See *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. We should not be deciding what we would have done if we had been the trial judge. *Id.*

In the present case, the District Court revoked Appellant's suspended sentences finding that Appellant had failed to report to his probation officer, failed to document employment, and failed to document sex offender treatment. It appears from the record that Appellant was knowledgeable and attempted to work the system. I cannot say that the District Court abused its discretion in revoking Appellant's sentences in their entirety where Appellant failed to comply with even the simplest of probation requirements. *Tilden*, 2013 OK CR 10, ¶ 10, 306 P.3d at 557 (finding no abuse of discretion in revoking entirety of suspended sentence "based upon Tilden's failure to comply with even the simplest probation requirement, to report to his probation officer and keep her advised of his whereabouts."). Therefore, I would affirm the District Court's order revoking Appellant's sentences in full.