

concurrently with each other and with Case Nos. CF-2005-443 and CF-2003-3709.

Appellant also pled guilty December 16, 2005, in Oklahoma County District Court Case No. CF-2005-443 to Using a Vehicle to Facilitate the Intentional Discharge of a Firearm (Drive By Shooting). In this case he was sentenced to ten years suspended to run concurrently with CF-2004-1266 and CF-2003-3709.

On April 3, 2006, the State filed an application to revoke Appellant's suspended sentences in these three cases. Following a revocation hearing before the Honorable Twyla Mason Gray, District Judge, on May 8, 2007, Appellant's suspended sentences were revoked in full. Appellant appeals from the revocation of his suspended sentences.

On appeal Appellant raised the following propositions of error:

1. The sentence revoked on Count II in CF-2004-1266 exceeds the original sentence and must be modified.
2. The District Court abused its discretion by excessive revocation of Appellant's suspended sentences.

The Response filed by the State agrees Appellant was sentenced to a five year suspended sentence on Count 2 in Case No. CF-2004-1266 and that the May 8, 2007, District Court Order Revoking Suspended Sentence incorrectly provides that Appellant is sentenced on Count 2 to ten years instead of five years. The State agrees that the Order Revoking Suspended Sentence in CF-2004-1266 should be corrected to reflect the sentence Appellant received on Count 2 was five years all suspended and that said sentence was revoked in full.

In Appellant's second proposition of error he argues the District Court abused its discretion by excessive revocation of Appellant's suspended sentences. We disagree. The decision to revoke a suspended sentence in whole or only in part lies within the discretion of the trial court whose decision will not be disturbed absent an abuse of discretion. *Wallace v. State*, 1977 OK CR 154, ¶ 7, 562 P.2d 1175. Appellant has not shown the trial judge abused her discretion by revoking Appellant's suspended sentences in full.

IT IS THEREFORE THE ORDER OF THIS COURT, finding no abuse of discretion, that the revocation of Appellant's suspended sentence in the District Court of Oklahoma County, is **AFFIRMED**. However, the District Court Order Revoking Suspended Sentence in CF-2004-1266 must be corrected to reflect the sentence Appellant received on Count 2 was five years and not ten years. **THEREFORE**, this matter is **REMANDED** to the District Court of Oklahoma County for an order *nunc pro tunc* correcting the Order Revoking Suspended Sentence in full in CF-2004-1266 to reflect five years, and not ten years, revoked on Count 2.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 4th
day of February, 2008.



GARY L. LUMPKIN, Presiding Judge



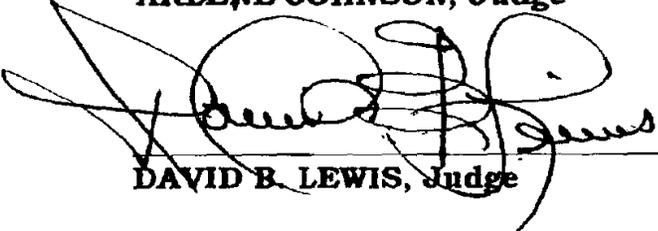
CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

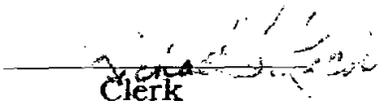


ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

RB