

The Court **FINDS** that the order revoking Appellant's suspended sentences in CF-2001-131 must be reversed with instructions to dismiss. This is because in that particular case number the three, concurrent, three-year suspended sentences imposed on July 18, 2001, had all lapsed prior to the State filing its December 13, 2005, Application to Revoke.¹ As concerns the District Court's revocation order in CF-2001-132, we find for those reasons set forth below that neither reversal nor modification of that revocation is required.

Appellant claims an abuse of discretion in revoking in full the remainder of her suspended sentence in CF-2001-132. She argues that an abuse of discretion occurred because the District Court's revocation punished her for a probation violation committed while she was mentally ill. She further contends the revocation is excessive because there was evidence indicating her mental health issues, since the occurrence of the alleged violation, were being successfully addressed by medication.

In revocation proceedings, it is the State's burden to establish a probation violation by a preponderance of the evidence.² When the State presents evidence revealing that it is more likely than not that the defendant committed a probation violation, the State has met its burden to prove the violation by a preponderance of the evidence.³ Once the State has met this burden, the trial

¹ "It is clear that a trial court has jurisdiction, that is, the judicial power and authority to hear and determine the issue of revocation, only if an application to revoke the suspended sentence is filed before the expiration of the sentence." *Bewley v. State*, 1987 OK CR 160, ¶ 4, 742 P.2d 29, 31.

² *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322 ("violations of conditions of suspended sentence need only be shown by a 'preponderance' of the evidence.").

³ "A preponderance of the evidence has been defined by this Court to mean simply the greater weight of evidence . . . [or] that which, to the mind of the trier of fact or the seeker of the truth, seems most convincing and more probably true." *Henderson v. State*, 1977 OK CR 238, ¶ 4, 568 P.2d 297, 298 (per curiam).

court will be entitled to find a violation of probation even though there may a degree of conflicting testimony.⁴

Although in Appellant's matter there was perhaps enough evidence to raise suspicion about Appellant's sanity at the time of her probation violations, it was Appellant's burden to overcome the State's case by proving that defense. Appellant did not do this. She presented no compelling evidence as to her mental state at the time the offending threats were made—and this despite the fact that expert testimony should have been readily available to her due to her having been forcibly placed into a mental health facility just after the probation violation occurred. The evidence revealed Appellant was released from that facility within a day or so, thus lending support to a conclusion she did not have a mental illness of a severity that would prevent her from knowing right from wrong. Coupled with Appellant's past probation violations and having been placed on probation for a violent offense, Appellant's most recent violation gave the District Court sufficient cause to punish Petitioner with an order revoking the balance of her suspended sentence in full.⁵

IT IS THEREFORE THE ORDER OF THIS COURT that the January 5, 2006, order of the District Court of Grady County, revoking the suspension orders upon Appellant's suspended sentences in Case No CF-2001-131, is

⁴ See *Wallace v. State*, 1977 OK CR 154, ¶ 8, 562 P.2d 1175, 1177 (“though the evidence presented at the hearing was highly conflicting, there was sufficient evidence to support the court's finding that defendant was guilty of a violation of the terms and conditions of his suspended sentence”); *Ex parte Patton*, 1963 OK CR 45, ¶ 8, 382 P.2d 28, 31 (relying in part upon the principle that “[w]here the evidence of the state and the defendant is in direct conflict and the evidence of the state is sufficient to sustain a conviction, the Criminal Court of Appeals will not, in absence of error of law, reverse a conviction,” Court upheld revocation of suspended sentence despite “a direct conflict in the evidence” at the revocation hearing).

⁵ “[T]he decision to revoke the suspended sentence in whole or in part lies within the discretion of the trial court and absent an abuse thereof the trial court's decision will not be disturbed.” *Mack v. State*, 1981 OK CR 160, ¶ 3, 637 P.2d 1262, 1264.

REVERSED WITH INSTRUCTIONS TO DISMISS the State's December 13, 2005, Application to Revoke.

IT IS THE FURTHER ORDER OF THIS COURT that the January 5, 2006, order of the District Court of Grady County, revoking in full the balance of the order suspending execution of sentence in Case No CF-2001-132, is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

IT IS SO ORDERED.

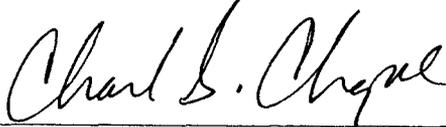
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day of June, 2007.



GARY L. LUMPKIN, Presiding Judge



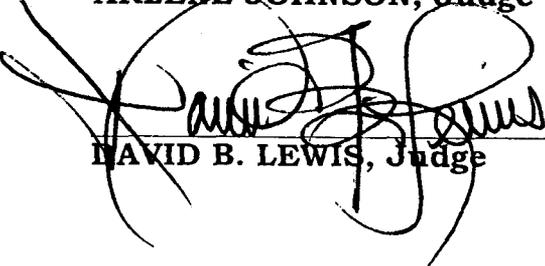
CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

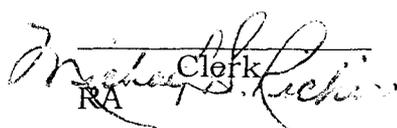


ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk
RA