

FEB 16 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JEFF BRYSON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. RE 2000-0392

ACCELERATED DOCKET ORDER

Appellant pled guilty August 2, 1989, in the District Court of Muskogee County, Case No. CRF-89-110, to Counts 1-48 - Lewd Molestation and Counts 49-98 - Rape By Force And Fear. Appellant was sentenced to thirty years with twenty years suspended on each of the 98 counts, to run concurrently, with rules and conditions of probation. On February 10, 2000, the State filed an application to revoke Appellant's suspended sentences. Following a hearing February 28 and March 21, 2000, Appellant's suspended sentences were revoked in full, twenty years on each count. Appellant appeals from the revocation of the suspended sentences.

Pursuant to Rule 11.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2000), the appeal was automatically assigned to the Accelerated Docket of this Court. Appellant raised the following propositions of error on appeal:

1. The trial court's sentencing of thirty years and subsequent revocation of twenty years in Counts 1 through 48 was invalid because it was in excess of the statutory maximum for the charged crime.
2. The only evidence presented by the State to support its allegation of Appellant's violation of probation was inadmissible.
3. Appellant was denied his Sixth Amendment right to be confronted by his accuser at the revocation hearing.

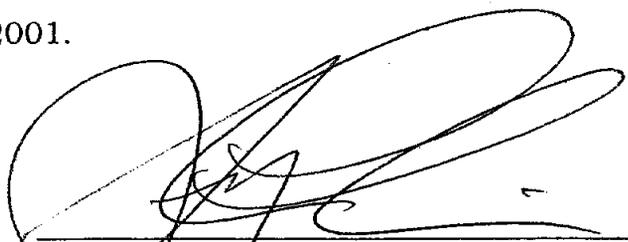
Oral argument was held February 1, 2001, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

We agree with Appellant, as set forth in Appellant's first proposition of error, that the sentences received for Counts 1 through 48 were in excess of the statutory maximum for the charged crimes. See 21 O.S.1981, § 1123. Lewd molestation carries a punishment range of one to twenty years. We find no merit to Appellant's second and third propositions of error

IT IS THEREFORE THE ORDER OF THIS COURT, by a four to zero vote, the revocation of Appellant's suspended sentences is **AFFIRMED**. However, by a vote of three to one, the sentences for Counts 1 through 48 for Lewd Molestation are modified in the Judgment and Sentence on Plea of Guilty issued July 24, 1989, from thirty (30) years to twenty (20) years. The matter is **REMANDED** to the District Court for further proceedings consistent with this Order.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 16th day
of February, 2001.



GARY L. LUMPKIN, Presiding Judge
AFFIRMS IN PART, DISSENTS IN PART



CHARLES A. JOHNSON, Vice Presiding Judge

Charles S Chapel

CHARLES S. CHAPEL, Judge

Steve Lile

STEVE LILE, Judge

ATTEST:

James Littleman
Clerk

LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the revocation of suspended sentences in each of the Appellant's cases. However, I must dissent to the Court taking action in modifying a final sentence when that issue is not before the Court and the Court does not have jurisdiction in this proceeding to take that action.

The judgments and sentences in each of these cases have become final. Once that finality has been established, the only method by which any court, including this Court, can reassume jurisdiction over the validity of those judgments and sentences is through the provisions of the Uniform Post-Conviction Procedure Act, 22 O.S.1991, § 1080, *et seq.* The scope of our review in an appeal of a revocation of a suspended sentence is set forth in Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App.(1999). That rule provides, "However, the scope of review is limited to the validity of the revocation order. The appropriate appeal time commences upon imposition of the order revoking suspended sentence. The validity of the predicate conviction can only be appealed through a separate appeal pursuant to the regular felony and misdemeanor procedures of these rules, Sections II and III, or the certiorari procedure, Section IV of these rules." The Appellant did not commence a direct appeal of these convictions, therefore his only vehicle for addressing the validity of those judgments and sentences is through

the post-conviction procedure, and not within the scope of the revocation of his suspended sentences. If this Court had jurisdiction at this time to address the validity of the sentences in Counts 1 through 48, I would join with the Court. However, I cannot join in an act by this Court which addresses a matter not before the Court and over which this Court does not have jurisdiction at this time. The Appellant should be instructed the proper procedure is to file an Application for Post-Conviction Relief and allow the District Court the opportunity to first address the issue of whether or not the sentences set forth on the judgment and sentence are in excess of the statutory maximum for the charged crime. If the District Court fails to grant that application, once the evidence is presented to it, then this Court would have jurisdiction in a timely perfected appeal to adjudicate the issue.