

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOSEPH LEONARD COX, JR.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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No. RE-2013-848

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

DEC 19 2014

SUMMARY OPINION

**MICHAEL S. RICHIE
CLERK**

JOHNSON, JUDGE:

Joseph Leonard Cox, Jr., Appellant, was charged on February 24, 2010, with Endeavoring to Manufacture Methamphetamine, in Osage County District Court Case No. CF-2010-51. On May 4, 2010, Appellant entered a plea of guilty and the Honorable John Kane, District Judge, sentenced Appellant to twenty years imprisonment, with all twenty years suspended.

The State filed a motion to revoke Appellant's suspended sentence on April 6, 2011, alleging Appellant committed the new crimes of Count 1, Possession of Controlled Substance; Count 2, Possession of Controlled Substance; Count 3, Possession of Controlled Substance; and Count 4, Unlawful Possession of Drug Paraphernalia as alleged in Osage County District Court Case No. CF-2011-82. On April 8, 2011, Appellant appeared in the District Court and was arraigned on the motion to revoke. The District Court entered a "General Denial" on Appellant's behalf and ordered Appellant to appear on April 15, 2011. Appellant appeared on April 15, 2011, and the District Court set the motion to revoke for hearing on May 19, 2011.

After several continuances, a hearing on the motion to revoke was held on January 7, 2013. Appellant stipulated to the allegations contained in the motion to revoke and pursuant to a plea agreement Judge Kane revoked Appellant's twenty year suspended sentence in full. Appellant appeals, raising the following issues:

Proposition I: The trial court lacked jurisdiction to revoke Mr. Cox's suspended sentence because the hearing on the application to revoke was not held within 20 days of the entering of Mr. Cox's Plea.

Proposition II: Because the evidence was uncontradicted that Mr. Cox was under duress when he stipulated to the allegations in the motion to revoke, the trial court should have allowed Mr. Cox to withdraw his stipulation to the motion to revoke.

In Appellant's first proposition of error, Appellant argues the District Court lost jurisdiction to hear the State's application to revoke by failing to hold the hearing within twenty days and by failing to timely secure a waiver of the twenty-day rule. Section 991b(A) of Title 22 requires that a hearing on the State's application to revoke must be held "within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the state and the defendant". *See, Byrd v. Caswell*, 2001 OK CR 29, ¶ 6, 34 P.3d 647, 648-649.

The State's Answer Brief filed in this Court on April 28, 2014, concedes Proposition I. The State agrees that the trial court lost jurisdiction over the State's motion to revoke and agrees that this error requires reversal and remand to the District Court. After reviewing the record on appeal we agree. Because Appellant's first proposition of error requires relief, the second proposition of error will not be addressed.

DECISION

The revocation of Appellant's suspended sentence in Osage County District Court Case No. CF-2010-51 is **REVERSED** and **REMANDED** to the District Court for further proceedings consistent with this Opinion. 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.

REVOCAATION APPEAL FROM THE DISTRICT COURT OF OSAGE COUNTY, THE HONORABLE JOHN KANE, DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: JOHNSON, J.

LEWIS, P.J.: Concur
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur

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