

From this judgment and sentence Cully appeals raising the following issues:

1. Because Appellant's sentences were originally ordered to be served concurrently, the court's failure to likewise specify concurrent sentencing in the judgment and sentence issued following revocation is error; and
2. The trial court was without authority to modify Appellant's sentence by adding post-imprisonment supervision.

The revocation of Cully's suspended sentences is **AFFIRMED**. Cully's request for issuance of an order *nunc pro tunc* is **DENIED**. The portion of the revocation order entered September 14, 2015, imposing post-imprisonment supervision is **VACATED** and the matter is **REMANDED** to the District Court of Seminole County for issuance of a corrected judgment and sentence consistent with this opinion.

Cully's first proposition of error seeks correction of the order revoking his suspended sentence through issuance of an order *nunc pro tunc*, reflecting that his sentences in Seminole County Case No. CF-2008-321 are to be served concurrently. This request is actually for extraordinary relief. See Rule 10.1(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016). If Cully believes he is entitled to issuance of an order *nunc pro tunc*, a proper request for such an order should be made directly to the District Court, prior to seeking redress through this Court. See, *Grimes v. State*, 2011 OK CR 16, ¶ 21, 251 P.3d 749, 755. The request for issuance of an order *nunc pro tunc* is **DENIED**.

In proposition two, Cully argues, and the State concedes, that the trial court had no authority to impose post-imprisonment supervision upon revoking Cully's suspended sentences. The controlling statute, 22 O.S.Supp. 2012, 991a-21, was

not enacted until 2012 and is applicable to persons convicted after November 1, 2012. It reads as follows:

- A. For persons convicted and sentenced on or after November 1, 2012, the court shall include in the sentence of any person who is convicted of a felony and sentenced to a term of confinement with the Department of Corrections, as provided in Section 991a of Title 22 of the Oklahoma Statutes or any other provision of the Oklahoma Statutes, a term of post-imprisonment supervision. The post-imprisonment supervision shall be for a period of not less than nine (9) months nor more than one (1) year following confinement of the person and shall be served under conditions prescribed by the Department of Corrections. In no event shall the post-imprisonment supervision be a reason to reduce the term of confinement for a person.

Cully was convicted in 2010 and this statutory provision is inapplicable to him. Judgment of guilt and determination of a sentence are made at the time the suspended sentence is entered. The suspension of the sentence is simply a condition placed upon the execution of that sentence. *See, Hemphill v. State*, 1998 OK CR 7, ¶ 6, 954 P.2d 148; 22 O.S. § 991a(A)(1). The consequence of the judicial revocation is to execute a penalty previously imposed in the judgment and sentence. *Id.*; *Burnham v. State*, 2002 OK CR 6, fn. 2; 43 P.3d 387, 390. The District Court erred in adding the post-imprisonment supervision provision to Cully's sentence in the Order Revoking Suspended Sentence. *See, Friday v. State*, 2016 OK CR 16, ¶ 5, ___ P.3d__.

DECISION

The order of the District Court of Seminole County revoking Appellant's suspended sentences in Case No. CF-2008-321 is **AFFIRMED**. Appellant's request

for issuance of an order *nunc pro tunc* is **DENIED**. The portion of the revocation order entered September 14, 2015, imposing post-imprisonment supervision is **VACATED** and the matter is **REMANDED** to the District Court of Seminole County for issuance of a corrected judgment and sentence consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY
THE HONORABLE GEORGE W. BUTNER, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.:

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