

APR 20 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

PETER PAUL DAVIDSON,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE 2005-0473

SUMMARY ORDER

Appellant pled guilty to Count 1 – Burglary, Second Degree, and Count 2 – Knowingly Concealing Stolen Property, after former conviction of two felony crimes. He was sentenced May 30, 1996, in the District Court of Bryan County, Case No. CF-1996-12, to twelve years on each count, with two years suspended and with rules and conditions of probation. The sentences were ordered to run concurrently. On March 2, 2005, the State filed a second amended petition to revoke Appellant’s suspended sentences.

Following a revocation hearing May 5, 2005, the Honorable Farrell M. Hatch, District Judge, found Appellant violated the terms of his suspended sentences. The two year suspended sentences were revoked. Appellant appeals from the revocation of his suspended sentences.

On appeal Appellant raised the following propositions of error:

1. The court lost jurisdiction to hear the second amended petition to revoke by failing to either secure Mr. Davidson’s waiver of the twenty-day rule or hold the hearing within the twenty days following his arraignment on the petition.

2. The waiver of the twenty-day rule was invalid because it was not knowingly and voluntarily entered, and it was entered without the effective assistance of counsel.
3. The court abused its discretion in revoking Mr. Davidson's suspended sentence absent a showing that his failure to pay half of the court ordered restitution was willful.
4. The revocation order based on a failure to pay restitution, which was inflated and/or ordered to a party that was neither a victim nor suffered actual economic loss as a direct result of the criminal acts for which it was imposed, should be vacated and modified to relieve Mr. Davidson of any remaining restitution.
5. The written orders fully revoking the suspended portion of Mr. Davidson's sentence, but stating previous conditions remained, improperly extend the original term of suspension, were contrary to the court's oral order and should be corrected by an order *nunc pro tunc*.
6. The revocation of Mr. Davidson's entire suspended sentence was excessive under the facts of this case and should be favorably modified.

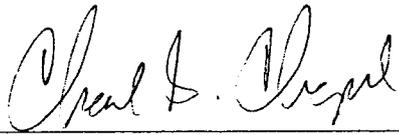
In Appellant's first proposition of error Appellant argues the District Court lost jurisdiction to hear the State's application to revoke by failing to hold the hearing within twenty days and by timely failing to secure a waiver of the twenty-day rule. Section 991b(A) of Title 22 requires that a hearing 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".

The record in the present case shows Appellant was arraigned on March 14, 2005. At arraignment the trial judge set the revocation hearing for April 4, 2005, which is not within twenty days after the entry of the plea. Waiver of the twenty-day period was made by Appellant at the hearing that was held April 4, 2006, which was after the twenty-day period had expired.

Because we find merit to Appellant's first proposition of error, we do not find it necessary to address Appellant's remaining arguments. **IT IS THEREFORE THE ORDER OF THIS COURT** that the revocation order of the District Court is **REVERSED** and the matter is **REMANDED** to the District Court for further proceedings consistent with this Order. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), 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 30th
day of April, 2006.



CHARLES S. CHAPEL, Presiding Judge



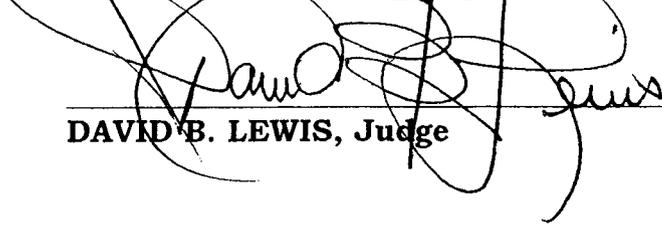
GARY L. LUMPKIN, Vice Presiding Judge



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

RC