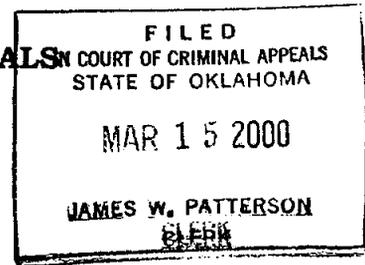


IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA



JOSEPH DE LA GARZA,)
)
 Appellant,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-99-565

ACCELERATED DOCKET ORDER

On August 8, 1995, Appellant, represented by counsel, entered guilty pleas in Case Nos. CF-95-158 and CF-95-159 to the charges of Unlawful Delivery of Marijuana in the District Court of Garfield County. Appellant received a ten (10) year sentence with five (5) years suspended in each case. On September 3 and 4, 1997, the State filed an application to revoke Appellant's suspended sentences. A revocation hearing was held March 5, 1998, and the court deferred sentencing after finding Appellant had violated the terms of his probation. On April 13, 1999, Appellant's suspended sentences were revoked in full. From this Judgment and Sentence, Appellant appeals.

On appeal Appellant raised two propositions of error:

1. The trial court committed reversible error by revoking Appellant's suspended sentence through proceedings which denied Appellant's statutory and constitutional rights; and
2. The sentence is excessive because the trial court revoked Appellant's suspended sentence in its entirety.

Pursuant to Rule 11.2(A)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (1999) this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions or issues were presented to this Court in oral argument March 2, 2000, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

We find merit in proposition one of Appellant's argument, and do not reach the issue raised in proposition two. Pursuant to 22 O.S. § 991(b)(E)(1991), Appellant has a statutory right to be represented by counsel at his revocation hearing. In the many hearings held over a period of approximately 2 years in this proceeding, Appellant was admonished by the District Court to obtain counsel. However, the record does not show that Appellant was advised he had the right to have counsel appointed if he could not afford counsel.

The right to counsel may be waived if done knowingly and voluntarily, but waiver will not be lightly presumed, and the trial judge must indulge every reasonable presumption against waiver. *Painter v. State*, 1988 OK CR 224, ¶ 10, 762 P.2d 900. While we agree that Appellant was told numerous times to secure counsel, we do not find that he was advised that he was entitled to appointed counsel if he was unable, for financial reasons, to secure counsel to represent him.

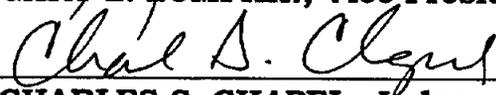
IT IS THEREFORE THE ORDER OF THIS COURT, by a three (3) to zero (0) vote, that the order of the District Court of Garfield County revoking Appellant's suspended sentence in Case No. CF-92-25 is **REVERSED** and **REMANDED** for a new hearing on the State's application to revoke. The District Court is directed to advise Appellant of his right to appointed counsel upon a showing of indigency.

IT IS SO ORDERED.

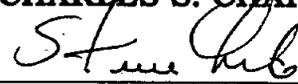
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 15th day of March, 2000.



GARY L. LUMPKIN, Vice Presiding Judge



CHARLES S. CHAPEL, Judge



STEVE LILE, Judge

ATTEST:



Clerk