

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RAYNARD EMORY DINKINS,)
A.K.A RONALD ALVIS DINKINS,)
Appellant,)
-vs-) No. RE-2006-180
THE STATE OF OKLAHOMA,)
Appellee.)

**ORDER GRANTING IN PART AND
DENYING IN PART REVOCATION APPEAL**

The Appellant, Raynard Emory Dinkins, a/k/a Ronald Alvis Dinkins, has appealed to this Court from an order of the District Court of Tulsa County, entered by the Honorable P. Thomas Thornbrugh, District Judge, revoking his suspended sentence in Case No. CF-2001-106. In that case, Appellant entered a plea of guilty to Unlawful Possession of Marijuana – Second Offense, and was sentenced to a term of five years, with the sentence suspended pursuant to rules and conditions of probation.

On February 5, 2003, the State filed a Motion to Modify Community Sentence in response to a violation report filed by the probation officer. On April 7, 2003, the hearing on the motion to modify was held before the Honorable Jefferson D. Sellers, District Judge. Judge Sellers found Appellant had violated probation and sentenced him to thirty days in the County Jail.

On June 17, 2004, Appellant was arrested and charged in Tulsa County District Court Case No. CF-2004-2692 with the crimes Trafficking in Illegal Drugs, Assault and Battery Upon a Police Officer, Attempted Destroying Evidence, and Driving Without Seatbelts. On June 28, 2004, the State filed an application to revoke Appellant's suspended sentence in this case alleging that he violated eight rules and conditions of his probation, but this initial application did not include the charges in Case No. CF-2004-2692. On July 28, 2005, the State filed an amended application to revoke Appellant's suspended sentence adding as a violation of probation the charges in Tulsa County District Court Case No. CF-2004-2692. On September 16, 2004, the application to revoke was called for arraignment and Appellant waived the 20 day hearing rule.

On February 10 and 13, 2006, the revocation hearing was conducted before Judge Thornbrugh. The State introduced the preliminary hearing transcript in Case No. CF-2004-2692. The State also introduced the testimony of Appellant's probation officer. Appellant presented no evidence in defense. At the conclusion of evidence and arguments, Judge Thornbrugh found Appellant had violated numerous rules and conditions of his probation. Judge Thornbrugh stated "I do now revoke his suspended sentence, sentence him to five years in the Custody of the Department of Corrections." (2/13/06 Tr. 40). Judge Thornbrugh did not give Appellant credit for time served in the County Jail prior to the revocation finding Appellant had been in custody so long because he kept firing lawyers and wouldn't cooperate with them. The written order revoking Appellant's suspended sentence states Appellant is sentenced "to

a term of **five (5) years** all under custody and control of the **Department of Corrections with NO CREDIT for time served.**" (O.R. 112-13) (emphasis in original).

Appellant asserts two propositions of error in this appeal. Appellant first contends the written order revoking his suspended sentence was in error because it failed to comport to the District Court's previous orders in that Mr. Dinkins had less than the five years revoked remaining on his suspended sentence. The second proposition contends that the District Court abused its discretion when it declined to give Mr. Dinkins credit for the time he served in county jail, as he awaited his revocation proceedings.

In the first proposition, Appellant asks, and the State agrees, he should be given credit against his sentence for the thirty days of time he served when his community sentencing was modified by Judge Sellers on April 7, 2003. The trial court shall give the offender day-for-day credit on any modified community sentencing for any term of incarceration actually served as community punishment. 22 O.S.2001, § 988.19(F), (I). When a suspended sentence is partially revoked, the trial court may only leave the remainder of the term of the sentence suspended. 22 O.S.Supp.2005, § 991b(D); see *Glenn v. State*, 1986 OK CR 16, ¶¶2-3, 714 P.2d 212, 213. Therefore, this appeal is granted in part and the matter remanded to the District Court to correct its revocation order to ensure Appellant gets credit for the thirty days previously served.

As to Appellant's second proposition, the general rule is that in the absence of statute, the time that the defendant has spent in jail awaiting trial

forms no part of the time for which he was sentenced. *Ex parte Tartar*, 94 Okl.Cr. 103, 104, 231 P.2d 709, 710 (1951). Where the case is tried to the court without a jury, it would be within the trial judge's discretion to consider the time spent in jail when fixing the penalty. *Id.* Appellant has not established Judge Thornbrugh erred or abused his discretion in applying the general rule, and in refusing to give credit for time served in the County Jail when Appellant's penalty was fixed. *Id.* Appellant argues that the record in this appeal does not support Judge Thornbrugh's decision, but it is Appellant's burden to establish from the appeal record that Judge Thornbrugh abused his discretion. The record in this case supports Judge Thornbrugh's finding that Appellant had problems with his attorneys, more than it does Appellant's contention he was without blame. Moreover, bond was set in Appellant's cases and it is apparent that he merely failed to present an acceptable bond, which fact constitutes no ground for release or credit for the time served because bond was not posted. *Ex parte Ward*, 97 Okl.Cr. 60, 61, 257 P.2d 1099, 1100. Finally, the appeal record specifically reflects that, on September 16, 2004, Appellant waived the 20 day hearing rule. Thus, Appellant's second proposition should be denied.

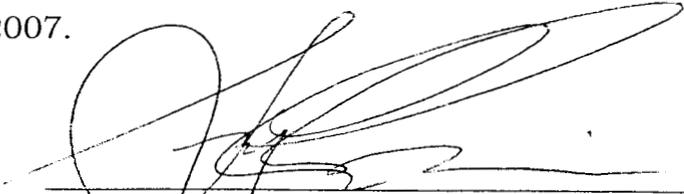
IT IS THEREFORE THE ORDER OF THIS COURT that, in accordance with the foregoing, Appellant's appeal from the revocation of his suspended sentence in Case No. CF-2001-106 in the District Court of Tulsa County should be, and is hereby, **GRANTED** in part and **DENIED** in part.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*,

Title 22, Ch. 18, App. (2007), the **MANDATE** is **ORDERED** issued forthwith upon the filing of this decision with the Clerk of this Court.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 23rd day of April, 2007.



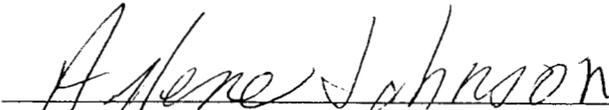
GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

*CIP/DIP
I concur with the opinion insofar as it grants credit for the 30 days. I dissent to the opinion in that it denies relief for the balance of jail time served with no credit. I would find the trial judge abuse his discretion.*

ATTEST:



Clerk

RA