

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

PAUL RENODO EPPERSON,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2009-655

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 25 2011

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LEWIS, VICE PRESIDING JUDGE:

In the District Court of Greer County, Case No. CM-2007-93, Paul Renodo Epperson, Appellant, pled guilty to the misdemeanor of violating a protective order. On June 18, 2007, pursuant to a plea agreement, the Honorable Danny R. Deaver, Associate District Judge, sentenced Appellant to one (1) year imprisonment, with all but the first thirty (30) days of that term suspended under written conditions of probation. On May 2, 2008, the State filed a Motion to Revoke Suspended Sentence alleging that Appellant violated his probation by not verifying inpatient drug and alcohol treatment and by not paying certain court costs and probation supervision fees. Appellant stipulated to these allegations on July 18, 2008; however, the District Court delayed its decision as to any sanction for his probation violations. After several continuances of its punishment decision, on July 9, 2009, Judge Deaver ordered 335 days of the suspension order to be revoked with credit for time served.

Appellant now appeals the District Court's revocation order and raises the following propositions of error:

I. The trial court erred when it imposed additional monetary obligations at the hearing on the motion to revoke appellant's suspended sentence.

II. Trial counsel's failure to secure the presence of a court reporter deprived appellant of the ability to pursue an appeal in this court.

After thoroughly considering Appellant's propositions of error and the entire record before this Court, including the original record, transcript, and briefs, the Court **FINDS** partial merit in Appellant's Proposition I but otherwise finds neither reversal nor modification is required.

Appellant's Proposition I challenges that portion of the court minute completed by Judge Deaver at the conclusion of the July 9, 2009, hearing that states Appellant's court costs are "\$1,746.30 to date" and that Appellant owes a "Jail fee of \$20.00 a day for 335 days in County Jail. (Total Jail Fees \$7,370.00)." (O.R. 41.) Appellant interprets these notations as being additional cost assessments against him that were not a part of his Judgment and Sentence at the time of conviction and were therefore outside the authority vested in a district court when hearing a revocation matter. Moreover, Appellant argues that he had not yet been incarcerated on the revoked portion of his sentence, and therefore the District Court's jail fee assessment was premature.

Appellant's analysis is only partly correct. Judge Deaver's court cost notation for \$1,746.30 as the accrued court costs as of the date of revocation was not an additional assessment made under any authority flowing from the State's filing of its "Motion to Revoke Suspended Sentence." Instead, it appears to be no more than a tally of the court costs assessed and accruing since Appellant's July 18, 2007, conviction—such court costs being an ongoing liability imposed on Appellant at the time of his conviction as part of the terms

of judgment and sentence itself and the probation orders that accompanied it. Moreover, as the District Court Clerk's Docket has not been included in the appeal record, there is nothing demonstrating that Judge Deaver's calculation of the total costs he found having accrued in Appellant's matter is incorrect.

The Court does find error, however, in Judge Deaver's assessment of jail incarceration fees, as it does not appear that he followed the required statutory procedure for assessing such fees. It is clear from a review of 22 O.S.Supp.2008, § 979a (the statute authorizing the collection of expenses incurred by a jail facility for a convicted person's incarceration) that jail incarceration fees can only be assessed for those days a defendant is actually received into custody at a jail facility and costs incurred by the entity operating the facility. *See Hubbard v. State*, 2002 OK CR 8, 45 P.3d 96 (where Court remanded cases to trial courts to follow the procedures specified by Section 979a for assessing jail time costs). Obviously such actual costs do not arise until after the defendant's incarceration has occurred. Accordingly, the District Court's jail fee assessment, imposed on July 9, 2009, for an incarceration that had not yet occurred, must be vacated.

In Proposition II, Appellant asserts that his trial counsel provided ineffective assistance in not securing a court reporter for purposes of recording the July 9, 2009, proceedings. Because Appellant completed the revoked portion of his sentence prior to submission of his appeal to this Court, any possible error arising from his allegations of ineffective assistance of trial counsel have now been rendered moot and need not be addressed.

DECISION

The July 9, 2009, order of the District Court of Greer County revoking a 335-day portion of Appellant's suspended sentence in Case No. CM-2007-93 is

AFFIRMED, PROVIDED HOWEVER, the portion of that order assessing jail fees for the days revoked but not yet served is hereby **VACATED**. Nothing herein, however, shall prevent the District Court, subsequent to receiving mandate, from hereafter imposing jail incarceration costs against Appellant in a manner consistent with the procedures outlined in 22 O.S.Supp.2008, § 979a, for making such assessments for actual time Appellant has been incarcerated in the county jail as a result of his prosecution and conviction in CM-2007-93. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued on the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GREER COUNTY
THE HONORABLE DANNY R. DEAVER, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LEWIS, V.P.J.
A. JOHNSON, P.J.: **Concurs**
LUMPKIN, J.: **Concurs in Results**
C. JOHNSON, J.: **Concurs**
SMITH, J.: **Concurs**
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