

FEB 11 2004

MICHAEL S. RICHIE
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTI MARIE FARRIS,)
)
 Appellant,)
)
 -vs-) Nos. RE-2003-86
) and RE-2003-87
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

**SUMMARY ORDER AFFIRMING REVOCATION
OF SUSPENDED SENTENCES, AND REMANDING
TO THE DISTRICT COURT TO ORDER THAT
THE SENTENCES BE RUN CONCURRENTLY**

The Appellant, Christi Marie Farris, has appealed to this Court from the revocation of her suspended sentences in Case Nos. CF-1999-1412 and CF-1999-1488 in the District Court of Cleveland County, before the Honorable Tom A. Lucas, District Judge. In Case No. CF-1999-1412, Appellant entered a plea of guilty and was convicted of Count I: Unlawful Possession of a Controlled Drug – Meth; Count II: Unlawful Possession of Marijuana (misdemeanor); and Count III: Unlawful Possession of Paraphernalia. She was sentenced to a term of five (5) years on Count I, and to one (1) year in the County Jail on each of Counts II and III, with the sentences suspended and allowed to be served concurrently, each with the other and with her sentence in Case No. CF-1999-1488. In Case No. CF-1999-1488, Appellant entered a plea of guilty and was convicted of Count II: Unlawful Possession of Precursor Substance Without a Permit; and Count III: Maintaining a Dwelling House Used to Keep or Sell a Controlled Drug. She was sentenced to a term of five (5) years on both counts, with the sentences

suspended and allowed to be served concurrently, each with the other and with her sentence in Case No. CF-1999-1412.

On December 24, 2002, the State filed applications to revoke Appellant's suspended sentences. The applications alleged Appellant violated Rule 16 of her probation by committing the crimes, charged in Cleveland County District Court Case No. CF-2002-1796, of Count I: Unlawfully Manufacturing a Controlled Drug in Concert with others; Count II: Unlawful Possession of a Controlled Drug in Concert with others; and Count III: Child Endangerment. The hearing on the application to revoke was held before Judge Lucas on January 10 and 16, 2003. After considering the evidence and arguments, Judge Lucas found Appellant had violated probation. In Case No. CF-1999-1488, Judge Lucas revoked forty-five (45) days of Appellant's suspended sentence on Count II, and two (2) years and six (6) months of her suspended sentence on Count III. He ordered the revoked sentences to be served consecutively with each other, and consecutively with Appellant's sentence in Case No. CF-1999-1412. In Case No. CF-1999-1412, Judge Lucas revoked Appellant's five (5) year suspended sentence on Count I.

In this appeal, Appellant asserts two (2) propositions of error. The first proposition claims that, because the trial court's refusal to grant defense counsel's repeated requests for a continuance prevented Appellant from presenting an adequate defense, this court should grant her a new hearing. The second proposition contends the trial court erred by ordering the revoked sentences to run consecutively when the court had ordered them to run

concurrently at the time the sentences were imposed.

As to Appellant's first proposition, the decision to grant or deny a continuance is within the sound discretion of the trial court, and this Court should not disturb that decision unless there is a clear showing of abuse of that discretion and a showing of prejudice to the appellant. *Bowman v. State*, 1978 OK CR 115, ¶21, 585 P.2d 1373, 1378; *Shelton v. State*, 1990 OK CR 34, ¶28, 7903 P.2d 866, 876. Appellant is entitled to the effective assistance of counsel at a revocation hearing, but this Court and "the United States Supreme Court ha[ve] held that even the appointment of an attorney not familiar with the case on the day of trial is not per se an effective denial of assistance of counsel absent a showing of prejudice. *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970)." *Williamson v. State*, 1975 OK CR 35, ¶18, 532 P.2d 444, 450. A defense was presented for Appellant and her co-defendant. Judge Lucas even allowed a witness, who was apparently unavailable on January 10, 2003, to testify on January 16, 2003. Appellant has not established exactly how or why she was prejudiced by the late appointment of counsel. Appellant has not offered anything that could, or would, be done differently if she were granted a new hearing.

The State has confessed error on Appellant's second proposition. The terms of Appellant's Judgments and Sentences were previously imposed by the District Court and they were ordered to be served concurrently. The only issue in a revocation proceeding is whether the suspension order should be revoked and the sentence executed. *Degraffenreid v. State*, 1979 OK CR 88, ¶13, 599

P.2d 1107, 1110; *Hulsey v. State*, No. RE-2000-841 (Okl.Cr. February 8, 2001).

The sentence should not be lengthened from the original term imposed. *Hemphill v. State*, 1998 OK CR 7, ¶9, 954 P.2d 148, 151.

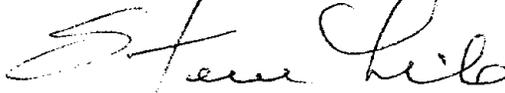
IT IS THEREFORE THE ORDER OF THIS COURT that the orders of the District Court of Cleveland County revoking Appellant's suspended sentences in Case Nos. CF-1999-1412 and CF-1999-1488 should be, and are hereby, **AFFIRMED**, but **REMANDED** to the District Court to order that the sentences be served concurrently as originally imposed.

IT IS SO ORDERED.

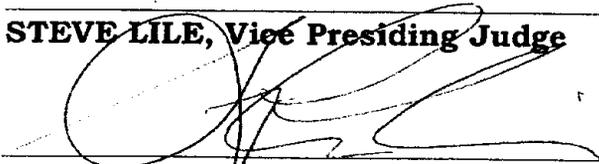
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 11th day of February, 2004.



CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge

Concur in part and Dissent in part. Both of Appellant's propositions of Error have merit. I would remand for a new hearing on the Application to Revoke.



RETA M. STRUBHAR, Judge

ATTEST:



Clerk