

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JIMMY LEE FIELDS,
Appellant,
-vs.-
THE STATE OF OKLAHOMA,
Appellee.

NOT FOR PUBLICATION

No. RE-2015-765

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 11 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, VICE PRESIDING JUDGE:

In the District Court of Tulsa County, Case No. CF-2000-1203, Jimmy Lee Fields, Appellant, while represented by counsel, entered a plea of guilty to one count of Sexually Abusing a Minor Child in violation of 10 O.S.Supp.1996, § 7115. There being no plea agreement, a presentencing report was ordered prepared. On receipt of that report, the Honorable Jefferson Sellers, District Judge, on September 28, 2000, sentenced Appellant to fifteen (15) years imprisonment, with all but the first five (5) years suspended. Thereafter, on September 24, 2001, Judge Sellers, modified Appellant's sentence on judicial review to a term of fourteen (14) years imprisonment and ordered the execution of that term suspended under written conditions of probation.

In 2015, the State moved to revoke this suspension order on grounds that Appellant had violated his probation by committing the felonies of Child Sexual Abuse and Failure to Register as Sex Offender, both as charged in Tulsa County District Court Case No. CF-2015-1475. On August 12, 2015, the Honorable William D. LaFortune, District Judge, following an evidentiary hearing on the State's revocation application, revoked the suspension order in full.

Appellant now appeals that final order of revocation, and he raises the following propositions of error:

1. The District Court abused its discretion when it imposed post-imprisonment supervision at the time of the revocation of Appellant's suspended sentence.
2. The District Court abused its discretion in revoking Appellant's entire sentence in light of the facts of this case.

Having thoroughly considered these propositions of error and the entire record before this Court, including the original record, transcript, and briefs of the parties, the Court **FINDS** no error in the District Court having ordered revocation in full. The Court does find, however, that the written order of revocation should be corrected to accurately reflect the final order of revocation pronounced by the District Court.

At the conclusion of the August 12, 2015, evidentiary hearing, Judge LaFortune pronounced his decision to revoke the whole of the September 24, 2001, order that had suspended the execution of Appellant's fourteen (14) year sentence.¹ Approximately three months later, on November 9, 2015, Judge LaFortune signed and filed a written "Order Revoking Suspended Sentence." (O.R. 116-17.) This written order contained the following provision, "Upon release from such confinement, the Defendant shall serve a term of post-imprisonment supervision, under conditions prescribed by the Department of Corrections, for a period of NINE (9) MONTHS TO ONE (1) YEAR."

Appellant's Proposition One claims, and the State agrees, that the District Court was without authority on revocation to require a term of post-

¹ See 22 O.S.Supp.2012, § 991b(A) (statute permitting a trial court, "[w]henver a sentence has been suspended," to revoke that suspension "in whole or part" on the filing by the district attorney of "a petition setting forth the grounds for such revocation . . . and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose . . .").

imprisonment supervision, because, among other reasons, such a term was not a part of the fourteen (14) year sentence that was imposed against Appellant on September 24, 2001. See *Friday v. State*, 2016 OK CR 16, ¶ 6, ___ P.3d ___, 87 OBJ 1594, 1595 (Okl.Cr. Aug. 3, 2016). We note, however, that when Judge LaFortune pronounced his decision to revoke, he did not state he was imposing a term of post-imprisonment supervision. It was not until preparation of the District Court's written order that this provision first appeared. We therefore find that the proper remedy is to remand this matter for entry, *nunc pro tunc*, of an amended written order of revocation that correctly memorializes the actual revocation orders pronounced at the conclusion of the evidentiary hearing.

Appellant's Proposition Two argues that the District Court abused its discretion in revoking its suspension order in full. To establish an abuse of discretion, Appellant must prove an "unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts." *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209. We find no such proof is present within the appeal record.

Appellant violated his probation by committing two additional felonies, one of which was the crime of Child Sexual Abuse committed while Appellant was on probation for Sexually Abusing a Minor Child. In *Demry v. State*, 1999 OK CR 31, ¶ 21, 986 P.2d 1145, 1148, we recognized the seriousness of repeating the very crime for which one had been placed on probation. Appellant's violations plainly provided the District Court with logical justification for revoking in full, and they did so despite the presence of the circumstances cited by Appellant concerning his health and prior history of probation compliance.

DECISION

The final order of August 12, 2015, which revoked in full the order suspending execution of Appellant's sentence of imprisonment in Tulsa County District Court Case No. CF-2000-1203, is **AFFIRMED**; provided however, the matter is **REMANDED** to the District Court with instructions to enter an amended written order of revocation *nunc pro tunc* that properly records the revocation orders pronounced on August 12, 2015, and, in a manner consistent with this Opinion, eliminates language reflecting the imposition of a term of post-imprisonment supervision. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM D. LAFORTUNE, DISTRICT JUDGE

APPEARANCES AT TRIAL

RICHARD KOLLER
ASSISTANT PUBLIC DEFENDER
423 SOUTH BOULDER AVE., SUITE 300
TULSA, OKLAHOMA 74103
ATTORNEY FOR DEFENDANT

JOHN BRASHER
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY COURTHOUSE
500 SOUTH DENVER AVENUE
TULSA, OKLAHOMA 74103
ATTORNEY FOR STATE OF OKLAHOMA

OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: Concur
JOHNSON, J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur

RB

APPEARANCES ON APPEAL

NICOLE HERRON
ASSISTANT PUBLIC DEFENDER
423 SOUTH BOULDER AVE., SUITE 300
TULSA, OKLAHOMA 74103
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
DONALD D. SELF
ASSISTANT ATTORNEY GENERAL
313 NORTHEAST 21ST STREET
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE