



ORIGINAL

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

SEP - 6 2018

JOHN D. HADDEN
CLERK

TEDDY LYNN FONTENOT,
Appellant,

NOT FOR PUBLICATION

-vs.-

No. RE-2017-149

THE STATE OF OKLAHOMA,
Appellee.

SUMMARY OPINION

HUDSON, JUDGE:

In the District Court of Pottawatomie County, Appellant, while represented by counsel, entered pleas of guilty to Escape from Arrest and Knowingly Concealing Stolen Property (Case No. CF-2014-80) and to Domestic Assault and Battery Against a Pregnant Woman, a Second Offense (Case No. CF-2014-503), all after former conviction of two or more felonies. On March 30, 2016, in accordance with a plea agreement, the Honorable John G. Canavan, Jr., District Judge, sentenced Appellant for each count to a \$250.00 fine and ten (10) years imprisonment. Judge Canavan then ordered those three ten-year terms of imprisonment to be served concurrently with one another but suspended their execution with written conditions of probation that included a community sentencing plan.

On December 6, 2016, the State filed a Motion to Revoke Suspended Sentence in each of Appellant's cases. These Motions alleged that Appellant had violated his probation by failing to report to his probation officer and by not following certain LSI recommendations that included a DUI assessment, outpatient treatment, Moral Recognition Therapy, and a 52-week domestic violence course. Following an evidentiary hearing on these allegations, Judge Canavan, on February 1, 2017, revoked his suspension orders in full.

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

- I. The trial court abused its discretion in revoking Mr. Fontenot's suspended sentences in full.
- II. The trial court was without legal authority to modify Mr. Fontenot's sentences by adding post-imprisonment supervision after revocation.

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 warranting reversal or modification of that order pronounced in revocation of the suspension orders in full, but the Court does find that amendment is required of the District Court's written orders of revocation.

At the revocation hearing, Appellant stipulated to the State's alleged probation violations. Appellant also testified that he reported to his probation officer until July, but quit doing so once he learned the officer was planning to file a violation report. Appellant stated that before being arrested on the revocation warrants, he had obtained stable employment through a great-uncle who additionally provided him with a place to live away from drugs and alcohol. Appellant further expressed to the trial court that he desired drug and alcohol rehabilitative treatment.

Appellant's Proposition I argues that these circumstances weigh against incarceration and in favor of continued probation and treatment. Other evidence before the District Court, however, revealed that before his current probation, Appellant had been sent to prison three different times and prior to that had been the subject of juvenile delinquency proceedings. Despite the extraordinary opportunity for probation and the strict supervision provided by the community sentencing program, Appellant ceased to comply with his probation requirements after only a couple of months.

"The standard of review applied to revocation proceedings is abuse of discretion." *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557. An abuse of discretion requires an "unreasonable or

arbitrary action taken without proper consideration of the facts and law pertaining to the issue.” *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209. The record here does not reveal an abuse of discretion because there was some evidence before the District Court that was unfavorable to further probation. Because no arbitrary action is shown where there is some evidence supporting a trial court’s decision, Appellant’s Proposition I does not show error.

Appellant’s Proposition II complaint concerns those written orders Judge Canavan entered following his pronouncement of the revocation decision. In each written order, Judge Canavan included a provision directing that Appellant would be subject to a term of post-imprisonment supervision after completing his terms of incarceration. Because post-imprisonment supervision was not a part of the sentencing provisions imposed on Appellant’s guilty pleas and for which execution of sentence was suspended, the District Court had no authority to impose post-imprisonment supervision as part of its revocation orders. “The consequence of judicial revocation is to execute a penalty previously imposed in a judgment and sentence.” *Grimes v. State*, 2011 OK CR 16, ¶ 13, 251 P.3d 749, 754. The State concedes the error in imposing the additional punishment. We therefore find that the District Court should be directed to enter an “Amended Order Revoking

Suspended Sentence” in each of Petitioner’s cases that deletes the unlawful post-imprisonment supervision provisions.

DECISION

The final order of February 1, 2017, revoking in full the suspension orders in Pottawatomie County District Court Case Nos. CF-2014-80 and CF-2014-503, is **AFFIRMED**; provided however, the matter is **REMANDED** to the District Court with instructions to enter *nunc pro tunc* amended orders of revocation eliminating the language reflecting imposition of post-imprisonment supervision. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT
OF POTTAWATOMIE COUNTY
THE HONORABLE JOHN G. CANAVAN, JR., DISTRICT JUDGE

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OPINION BY: HUDSON, J.
LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR
KUEHN, J.: CONCUR IN RESULTS
ROWLAND, J.: CONCUR

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