



2016. Following a hearing on the State's application on October 13, 2016, the Honorable Walter Hamilton, Special Judge, found by a preponderance of the evidence that Appellant violated the terms of his performance contract as alleged by the State. Appellant was sentenced to twelve years imprisonment, with credit for time served.

Appellant appeals from his termination from Drug Court. On appeal Appellant argues that the trial court abused its discretion when it allowed the introduction of impermissible hearsay evidence without an exception to the hearsay rule and found that Appellant violated the terms of his Drug Court contract based solely on the inadmissible evidence. Appellant also argues that insufficient evidence was introduced to show that he committed an act that was in violation of his performance contract and that the termination from Drug Court was an abuse of discretion under the facts of this case.

"At the revocation hearing, if the offender is found to have violated the conditions of the plea agreement or performance contract and disciplinary sanctions have been insufficient to gain compliance, the offender shall be revoked from the program and sentenced for the offense as provided in the plea agreement." 22 O.S.2011, §471.7(E). The Oklahoma Drug Court Act, 22 O.S.2011, §471.7(E), requires the Drug Court judge to recognize relapses and restarts in the program by ordering progressively increasing sanctions or providing incentives rather than removing the offender from the program when a relapse occurs "except when the offender's conduct requires revocation from the program." The decision to revoke or terminate from Drug Court lies within the

discretion of the Drug Court judge. *Hagar v. State*, 1999 OK CR 35, ¶11, 990 P.2d 894.

In this case Donna Coffey, the Drug Court Coordinator and the State's sole witness, testified about the contents of a lab report that she did not prepare. She did not conduct the test and the test was not introduced. Appellant argues that this evidence, supporting the only alleged violation, was based entirely on hearsay without any exception and not bearing a sufficient indicia of reliability. Appellant argues that when the trial court found the existence of this violation and terminated Appellant, it abused its discretion. We agree.

Hearsay evidence is admissible in termination proceedings. The trial court may rely upon an out-of-court statement that bears substantial guarantees of trustworthiness without violating a defendant's right of confrontation. *Hampton v. State*, 2009 OK CR 4, ¶ 21, 203 P.3d 179. However, termination from Drug Court cannot be based entirely upon hearsay evidence. *Id.* In this case, it was. Further, the State has not shown that this evidence bears a sufficient indicia of reliability considering Appellant provided two negative tests shortly after the diluted test.

This Court also has grave concerns over the allegations contained in this record which paint a picture relating to the operation of this Drug Court.<sup>1</sup> The

---

<sup>1</sup> The record reflects that the Drug Court Coordinator is related to the owner of the rehabilitation centers which are run by the Drug Court Coordinator's sons, and that another family member owns property on which the Drug Court participants are required to complete service requirements for which they are not paid.

allegations include impropriety, or at the very least, the appearance of impropriety, and possible graft and corruption.

We, therefore, find it necessary to reverse the order of the District Court terminating Appellant from the McCurtain County Drug Court Program and remanding the matter to the District Court to reinstate Appellant into a Drug Court program, preferably in another county.

**DECISION**

The termination of Appellant from the McCurtain County Drug Court Program in McCurtain County District Court Case No. No. CF-2014-085 (Drug Court Case No. DC-2014-28) is **REVERSED** and **REMANDED** for reinstatement into a Drug Court program. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF MCCURTAIN COUNTY  
THE HONORABLE WALTER HAMILTON, SPECIAL JUDGE**

**APPEARANCES AT  
DRUG COURT TERMINATION  
HEARING**

TRAVIS S. CROCKER  
ATTORNEY AT LAW  
117 N. CENTRAL AVE.  
IDABEL, OKLAHOMA 74745  
COUNSEL FOR DEFENDANT

**APPEARANCES ON APPEAL**

SARAH MACNIVEN  
APPELLATE DEFENSE COUNSEL  
P. O. BOX 926  
NORMAN, OKLAHOMA 73070  
COUNSEL FOR APPELLANT

SCOTT F. DOERING  
ASSISTANT DISTRICT ATTORNEY  
108 N. CENTRAL AVE., SUITE 1  
IDABEL, OKLAHOMA 74745  
COUNSEL FOR THE STATE

MICHAEL J. HUNTER  
ATTORNEY GENERAL OF OKLAHOMA  
SHERI M. JOHNSON  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>st</sup> STREET  
OKLAHOMA CITY, OKLAHOMA 73105  
COUNSEL FOR THE STATE

**OPINION BY: HUDSON, J.**

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

RC