

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

AUG 15 2003

MICHAEL WAYNE GAY, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

MICHAEL S. RICHIE  
CLERK

No. RE 2002-1245

**SUMMARY OPINION**

Appellant pled guilty January 26, 2001, in the District Court of Muskogee County, Case No. CF-2000-508, to Robbery With a Weapon and Conspiracy. Appellant was sentenced to twenty-five years imprisonment on each count with all but the first ten years suspended, to run concurrently, and with rules and conditions of probation. On December 18, 2001, the State filed an Application to Revoke Suspended Sentence alleging Appellant lied under oath. Following a hearing February 11, 2002, the Honorable Mike Norman, District Judge, revoked Appellant's suspended sentence in full. Appellant appeals from the revocation of his suspended sentence.

On appeal Appellant raised the following propositions of error:

1. The prosecution's failure to give notice of the grounds for revocation that he later raised during the hearing and the trial court's subsequent revocation of Mr. Gay's suspended sentence violated Mr. Gay's right to due process under the Fourteenth Amendment to the United States Constitution.
2. Mr. Gay's sentence for conspiracy was greater than the statutory maximum; therefore, the sentence must be modified.

The record does not support Appellant's contention that he was denied due process. We have held that notice sufficient to apprise the defendant of the grounds upon which revocation is sought is essential. *See Lennox v. State*, 1984 OK CR 22, ¶ 6, 674 P.2d 1146. In this case the State alleged Appellant lied under oath. The record supports the State's allegation and this was the sole basis for the revocation of Appellant's suspended sentence.

As for Appellant's second proposition of error, the State agrees Appellant's sentence for Conspiracy exceeds the statutory maximum and should be modified. The State sets out that the statute providing sentencing guidelines for Conspiracy convictions in effect at the time Appellant committed his crimes, provided for a punishment range not to exceed ten years. 21 O.S.Supp.1999, § 421(C).

**IT IS THEREFORE THE ORDER OF THIS COURT**, that the revocation of Appellant's suspended sentence in the District Court of Muskogee County, Case No. CF-2000-0508, is **AFFIRMED**, but the twenty-five (25) year sentence for Conspiracy is **MODIFIED** to ten years (10).

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 15<sup>th</sup> day of August, 2003.

  
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**CHARLES A. JOHNSON, Presiding Judge**

  
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**STEVE LILE, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**



**CHARLES S. CHAPEL, Judge**



**RETA M. STRUBHAR, Judge**

ATTEST:



Clerk