

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

AUG - 1 2008

SHAUN LEE GESSEL,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

MICHAEL S. RICHIE
CLERK
Not for Publication

No. RE 2007-0484

SUMMARY OPINION

A. JOHNSON, JUDGE:

On August 17, 2005, Shaun Lee Gessel, Appellant, entered pleas of guilty in multiple cases in the District Court of Oklahoma County. The Honorable Twyla Mason Gray, District Judge, imposed the following sentences:

CF-2002-1069 Unauthorized Use of a Motor Vehicle
Sentence: Five years suspended, to run concurrently with case numbers CF-04-1401, CF-04-1823, CF-02-6266, CF-03-3457 and CF-04-2525.

CF-2002-6266 Count 1 - Unauthorized Use of a Motor Vehicle
Count 2 - Possession of Taken Credit Card
Sentences: Five years on Count 1, three years on Count 2, to run concurrently each with the other and with case numbers CF-04-1401, CF-04-1823, CF-02-1069, CF-03-3457 and CF-04-2525.

CF-2003-3457 Count 1 - Unauthorized Use of a Motor Vehicle
Count 2 - Concealing Stolen Property
Sentences: Five years on each count, to run concurrently each with the other and with case numbers CF-04-1401, CF-04-1823, CF-02-1069, CF-02-6266 and CF-04-2525.

CF-2004-1823 Threatening a Witness From Testifying

Sentence: Ten years to run concurrently with case numbers CF-04-1401, CF-04-2525, CF-02-6266, CF-03-3457 and CF-02-1069.

CF-2004-2525 Count 1 – Falsely Impersonating Another
Count 2 – Possession of Drug Paraphernalia
Sentence: Ten years on Count 1, one year on Count 2, to run concurrently each with the other and with case numbers CF-04-1401, CF-04-1823, CF-02-6266, CF-03-3457 and CF-02-1069.

On February 6, 2006, the State filed an application to revoke Gessel's suspended sentences in each of the five cases. Following a hearing before Judge Gray February 28, 2006, Gessel's suspended sentences were revoked in full. Gessel's appeal, RE 2006-0262, to this Court was granted, and the matter was remanded to the District Court by Order issued March 21, 2007.

The State filed an amended application to revoke Gessel's suspended sentences April 16, 2007. Following a hearing before Judge Gray May 4, 2007, Gessel's suspended sentences were revoked in full. Judge Gray ordered the following sentences:

CF-02-1069 Five year sentence to run concurrently with CF-02-6266, but consecutively with CF-03-3457, CF-04-1823 and CF-04-2525.

CF-02-6266 Five year sentence and three year sentence to run concurrently with CF-02-1069.¹

CF-03-3457 Five year sentences to run concurrently with each other but consecutively with CF-04-1823, CF-02-1069, CF-04-2525 and CF-02-6266.

¹ An order revoking Gessel's suspended sentence following the May 4, 2007, revocation hearing in this case, CF-02-6266, is not part of the record on appeal. The May 4, 2007, Transcript of the revocation hearing shows the trial judge revoked five years on Count 1 and three years on Count 2 and ordered "all of those counts and the two cases run concurrent". (Tr.14)

CF-04-1823 Ten year sentence to run concurrently with CF-02-6266 but consecutively with CF-03-3457, CF-02-1069, CF-04-2525 and CF-02-6266.

CF-04-2525 Ten year sentence and one year sentence ordered to run concurrently with each other and concurrently with CF-02-1069, CF-03-3457, CF-02-6266 and CF-04-1823.

Gessel appeals from the revocation of his suspended sentences alleging one proposition of error: the trial court lacked the authority to order his sentences to run consecutively. The State answers that Judge Gray ordered Gessel's sentences in CF-02-1069 and CF-02-6266 to run concurrent to each other but consecutive to CF-2006-3418 and each charge in Case Nos. CF-2003-3457, CF-2004-1823 and CF-2004-2525 to run consecutive to each other and consecutive to CF-2002-1069, CF-2002-6266 and CF-2006-3418. The State agrees the trial court erred by running Gessel's sentences consecutively and requests this Court remand the matter to the trial court for re-sentencing consistent with the judgment and sentences.

We agree. The consequence of a judicial revocation is to execute a penalty previously imposed in the Judgment and Sentence. *Marutzky v. State*, 1973 Ok Cr 398, ¶ 5, 514 P.2d 430.

DECISION

The revocation of Appellant's suspended sentences in Oklahoma County District Court Case Nos. CF-2002-1069, CF-2002-6266, CF-2003-3457, CF-2004-1823 and CF-2004-2525 are **AFFIRMED** but the cases are **REMANDED** to the District Court for re-sentencing consistent with the original Judgment and

Sentence imposed in each case. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

CONSOLIDATED APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY
THE HONORABLE TWYLA MASON GRAY, DISTRICT JUDGE

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REVOCATION HEARING**

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OPINION BY: A. JOHNSON, J.

LUMPKIN, P.J.: Concur
C. JOHNSON, V.P.J.: Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

RB