

conditions of probation. The sentence was ordered to run concurrent with Case No. CF-2011-1942. She was also fined \$600.00.

The State filed an application to revoke Appellant's suspended sentence in CF-2011-1942 on September 13, 2012, and in CF-2011-2208 on September 26, 2012. Amended applications were filed in both cases. In both cases the State alleged Appellant committed the new crime of Unauthorized Use of a Vehicle, a felony, as alleged in Case No. CF-2012-3829; Appellant admitted on February 20, 2013, to using crack cocaine and alcohol; Appellant failed to attend treatment, the Female Offender Diversion Program, as instructed; Appellant failed to pay probation fees and was in arrears; Appellant admitted using crack cocaine on April 17, 2013, and April 24, 2013. Contrary to Appellant's assertions to her probation officer and to the court, Appellant was not in regular contact with the Tulsa Center, and the Center was unable to reach Appellant when a bed became available. Appellant was then instructed to attend outpatient treatment at Family and Children Services. She failed to attend.

Following a revocation hearing for both cases on August 29, 2013, before the Honorable Tom C. Gillert, District Judge, Appellant was found to be in violation of the terms of her suspended sentences and the suspended sentences were revoked in full. The sentences were ordered to run concurrently. Appellant appeals from the revocation of her suspended sentences.

On appeal Appellant raises two propositions of error:

1. Appellant's sentence is excessive in light of the alleged probation violation.
2. The District Court was without authority to impose a period of post-imprisonment supervision in this case.

Appellant's first proposition of error argues that the revocation of six years was an abuse of discretion. The decision to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and such decision will not be disturbed absent an abuse thereof. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3rd 554, 557. "An 'abuse of discretion' has been defined by this Court as a 'clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application.'" *Walker v. State*, 1989 OK CR 65, ¶ 5, 780 P.2d 1181. Appellant has not shown an abuse of discretion.

In Appellant's second proposition of error he argues that the District Court was without authority to impose a period of post-imprisonment supervision. The State answers that because Appellant was convicted and sentenced in April of 2012, Sec. 991a-21 of Title 22, requiring post-imprisonment supervision for those sentenced after November 1, 2012, does not provide mandatory supervision in Appellant's case. We agree.

DECISION

The revocation of Appellant's suspended sentences in Tulsa County District Court Case Nos. CF-2011-1942 and CF-2011-2208 is **AFFIRMED** but **REMANDED** to the District Court to amend the orders revoking Appellant's suspended sentences striking the following language:

“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 *.”

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

REVOCATION APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, THE HONORABLE TOM C. GILLERT, DISTRICT JUDGE

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OPINION BY: SMITH, V.P.J.

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
A. JOHNSON, J.: CONCUR

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