

Following a hearing April 2, 2010, on the State's motion to accelerate Greenlow's deferred sentences, the Honorable Bill Culver, Special Judge, accelerated the deferred sentences. In both cases Greenlow was sentenced to five years on each count, suspended. The sentences were ordered to run concurrently.

On January 27, 2011, the State filed a motion to revoke Appellant's suspended sentences alleging Appellant (1) failed to report, (2) failed to pay supervision fees as ordered, and (3) failed to pay fines and costs as ordered. Following a revocation hearing on June 25, 2012, Judge Culver found Appellant violated his rules and conditions of probation. The suspended sentences were revoked in full, with credit for time served. The sentences were ordered to run concurrently. Greenlow appeals, raising the following issues:

- (1) whether the sentences in Case No. CF-2000-563 must be modified because they exceed the statutory maximum for the offenses; and
- (2) whether Greenlow's failure to make the required payments was willful.

We affirm the revocation of Greenlow's suspended sentences but remand the matter to the District Court to modify the sentences imposed in Case No. CF-2000-563.

1.

Greenlow was convicted of two counts of Placing Bodily Fluid on Government Employee in violation of 21 O.S.Supp.1999, § 650.9. He was sentenced pursuant to 21 O.S.Supp. 1999, § 9, which provides punishment by a fine not exceeding \$1,000.00 or by imprisonment in the State Penitentiary

not exceeding two years, or by both such fine and imprisonment. The State agrees that Greenlow's five year sentences in Case No. CF-2000-563 exceed the statutory maximum. The matter is therefore remanded to the District Court for modification of Greenlow's sentences.

2.

Violations of a suspended sentence need only be shown by a preponderance of the evidence. *Fleming v. State*, 1988 OK CR 162, ¶ 4, 760 P.2d 206. This Court has defined a "preponderance of the evidence" as that which is of greater weight and, further, which "could have been deemed more probably true than not . . ." *Cooper v. State*, 1979 OK CR 85, ¶ 13, 599 P.2d 419, *Henderson v. State*, 1977 OK CR 238, ¶¶ 4-5, 568 P.2d 297. Revocation is proper if only one violation is shown by a preponderance of the evidence. *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d 744. The State alleged and Greenlow testified that he did not report as directed. Greenlow also testified that he failed to make his payments as directed. Greenlow has not shown Judge Culver abused his discretion in revoking the suspended sentences.

DECISION

The revocation of Greenlow's suspended sentences in Ottawa County District Court Case Nos. CF-2000-550 and CF-2000-563 is **AFFIRMED**; however, the matter is **REMANDED** to the District Court for re-sentencing in Case No. CF-2000-563 in accordance with the above. Pursuant to Rule 3.15 the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**REVOCAATION APPEAL FROM THE DISTRICT COURT OF
OTTAWA COUNTY, THE HONORABLE WILLIAM E. CULVER,
SPECIAL JUDGE**

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OPINION BY: A. JOHNSON, J.

LEWIS, P.J.: Concur
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur in Part and Dissent in Part
C. JOHNSON, J.: Concur

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