

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

KASONDRA D. GREENWOOD,)
)
 Appellant,)
vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. F-2017-1053

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

JAN 31 2019

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION

HUDSON, JUDGE:

On October 13, 2015, Appellant Greenwood, represented by counsel, stipulated to the State's acceleration application filed in Atoka County Case No. CF-2014-145. That same date Greenwood entered a plea of no contest to a charge of Possession of CDS-Methamphetamine in Atoka County Case No. CF-2015-201 and pled guilty to Possession of Paraphernalia in Atoka County Case No. CM-2015-217. Sentencing in all three cases was deferred pending Greenwood's completion of the Atoka County Drug Court program.¹

¹ Upon successful completion of Drug Court, Greenwood was to be sentenced as follows:

CF-2014-145 The State's acceleration application would be dismissed.

CF-2015-201 Five (5) year deferred sentence, a \$500 fine, \$150 lab fee and court costs.

CM-2015-217 One (1) year deferred sentence and court costs.

On August 31, 2017, the State filed an Application to Terminate Greenwood from Drug Court. On October 4, 2017, at the conclusion of the hearing on the State's application, the Honorable Preston Harbuck, Associate District Judge, terminated Greenwood's Drug Court participation and sentenced her as specified in her plea agreement, with the exception of imposing a \$500 fine in Case No. CF-2015-201. From this judgment and sentence, Greenwood appeals raising the following propositions of error:

1. The \$500.00 fine imposed upon termination from Drug Court in Case No. CF-2015-201, must be vacated as an illegal sentence in excess of that to which the parties agreed upon Ms. Greenwood's admission to the Drug Court program; and
2. Termination was an abuse of discretion because rather than progressively increasing sanctions, Ms. Greenwood was sanctioned only to jail time awaiting transport to a 60-day "inpatient treatment" which included the questionable DARP Program.

The sentences were all to be served concurrently.

If terminated from the program, Greenwood was to be sentenced as follows:

CF-2014-145 Seven (7) years to do.

CF-2015-201 Seven (7) years to do.

CM-2015-217 One (1) year to do.

All sentences were to be served concurrently.

Greenwood's termination from Drug Court participation is **AFFIRMED**. This matter is **REMANDED** to the District Court of Atoka County, the Honorable Preston Harbuck, for entry of an Amended Judgment and Sentence **VACATING** the \$500.00 fine assessed in Case No. CF-2015-201.

We find merit in Greenwood's first proposition of error, and **REMAND** the matter to the district court for entry of an Amended Judgment and Sentence in Case No. CF-2015-201 **VACATING** the \$500.00 fine assessed at the termination hearing. The Drug Court statute limits the trial court's authority in imposing a sentence, specifying that the court terminating a drug court participant is limited to imposing the sentence stated in the plea agreement:

G. The judge **shall be prohibited** from amending the written plea agreement after an offender has been admitted to the drug court program. Nothing in this provision shall be construed to limit the authority of the judge to remove an offender from the program and impose the required punishment stated in the plea agreement after application, notice, and hearing.

22 O.S.2011, § 471.7(G).

In this instance, the written plea agreement specified that if Greenwood failed to complete the Drug Court program she would be

sentenced to “7 years in DOC” with no fine assessment. Judge Harbuck was prohibited from assessing the \$500 fine. We reject the State’s argument that this issue is not properly addressed in Greenwood’s Drug Court termination appeal. The scope of review in an acceleration appeal is limited to the validity of the order of acceleration. See, Rule 1.2(D)(5)(b), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019); *Whitaker v. State*, 2015 OK CR 1, ¶ 6, 341, P.3d 87, 89. Greenwood is not challenging her underlying conviction or sentence in this matter. Rather her claim is that the judgment and sentence entered in this case is invalid, in that it includes a fine not made part of her Drug Court plea agreement. To the extent that her claim challenges the validity of the trial court’s Drug Court termination order, we find that she is entitled to the relief requested.

At Proposition 2, Greenwood argues the trial court’s termination of her Drug Court participation was improper because she was not subjected to progressive sanctions during her Drug Court tenure. Rather, she was assessed greater sanctions, which included jail time and three separate attempts at rehabilitation programs. Testimony

established that during her time as a Drug Court participant, Greenwood repeatedly failed to report, failed to participate in counseling, failed to submit to drug testing, and failed to appear for Drug Court hearings. Greenwood did not dispute the State's allegations. Rather, her claim was that the Drug Court staff should have tried harder to gain her compliance which may have been possible through less severe sanctions.

Prior to terminating a defendant from Drug Court, the District Court must find that the offender violated the terms and conditions of the plea agreement or performance contract, and that disciplinary sanctions have been insufficient to gain compliance. See 22 O.S.2001 § 471.7(E); *Hagar v. State*, 1999 OK CR 35, ¶ 11, 990 P.2d 894, 898. The judge is to consider relapses and order increasing sanctions, "except when the offender's conduct requires revocation from the program." *Id.*; 22 O.S. § 471.7(E). Absent an abuse of discretion, this Court will not reverse a ruling of the District Court terminating a defendant from Drug Court. *Hagar, id.*

Greenwood argues on appeal that the Drug Court's failure to **force** her participation made termination from the program an abuse of discretion. Greenwood cites no controlling authority, and we find none, making it the responsibility of Drug Court to facilitate a defendant's physical compliance with the terms of her Drug Court contract. We find no abuse of discretion in the trial court's termination of Greenwood' Drug Court participation. Proposition 2 is denied.

DECISION

The order of the District Court of Atoka County terminating Appellant from Drug Court in Case Nos. CF-2014-145, CF-2015-201 and CM-2015-217 is **AFFIRMED**. The matter is **REMANDED** for entry of a corrected Judgment and Sentence in Case No. CF-2015-201 **VACATING** the \$500.00 fine assessed at the Drug Court termination hearing. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF ATOKA COUNTY
THE HONORABLE PRESTON HARBUCK,
ASSOCIATE DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: HUDSON, J.

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

RA/F

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