

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY - 4 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

MICHAEL WAYNE HACKLER,)
)
 Appellant,)
)
 -vs-) No. RE-2003-397
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

SUMMARY ORDER
AFFIRMING REVOCATION OF SUSPENDED SENTENCE

The Appellant, Michael Wayne Hackler, has appealed to this Court from the revocation of his suspended sentences in Case No. CF-2001-551, CF-2002-13, and CF-2002-110 in the District Court of Pittsburg County, before the Honorable Steven Taylor, District Judge. In Case No. CF-2001-551, Appellant pled guilty and was convicted of Count 1 - Unlawful Possession of Controlled Drug With Intent to Distribute, a felony; Count 2 - Unlawful Possession of Drug Paraphernalia, a misdemeanor; and Count 3 - Possession of Firearms After conviction or During Probation. In Case No. CF-2002-13, Appellant pled guilty and was convicted of Count 1 - Possession of Controlled Substance, a felony; and Count 2 - Driving While License is Canceled/Suspended/Revoked, a misdemeanor. In Case No. CF-2002-110, Appellant pled guilty and was convicted of one count of Possession of Firearms After Conviction or During Probation, a felony. The Judgments and Sentences all state that Appellant was sentenced in all cases and on all counts to a term of five (5) years imprisonment,

with all sentences ordered to be served concurrently and suspended pursuant to rules and conditions of probation.

On November 21, 2002, the State filed a petition to revoke Appellant's suspended sentence alleging Appellant had violated probation by committing the crimes of Count 1 - Trafficking in Illegal Drugs; Count 2 - Possessing Firearm While Committing a Felony; Count 3 - Unlawful Use of Police Radio; and Count 4 - Unlawful Possession of Drug Paraphernalia, all as charged in Pittsburg County District Court Case No. CF-2002-400.

On March 26, 2003, hearings were held before Judge Taylor on the petition to revoke, and on a motion to suppress evidence that had been filed by Appellant. After considering the evidence and arguments, Judge Taylor sustained the motion to suppress the evidence as to Case No. CF-2002-400. Judge Taylor further found that the exclusionary rule does not apply to the revocation proceeding in this case, because his conscience was not shocked and that there was not the permeation of injustice throughout the proceedings to cause the exclusionary rule to apply. After hearing the evidence and arguments in the revocation hearing, Judge Taylor found Appellant had violated probation and revoked his five (5) year suspended sentences in all cases and on all counts. Appellant brings this appeal.

In this appeal, Appellant asserts two (2) propositions of error. The first proposition contends that the evidence adduced at the revocation hearing was obtained as a result of egregious police misconduct and therefore should have been suppressed. The second proposition contends that the Judgments and

Sentences should be modified to accurately state the sentence imposed.

Absent egregious police misconduct, evidence illegally seized from a probationer is not barred by the exclusionary rule from revocation proceedings.

Richardson v. State, 1992 OK CR 76, 841 P.2d 603. Judge Taylor did not err or abuse his discretion in finding that the acts of the sheriff's deputies in this case were not egregious and do not shock the conscience. Moreover, as the State acknowledges, Appellant's Judgments and Sentences should be corrected to reflect that the misdemeanor sentences on Count 2 in Case No. CF-2001-551, and on Count 2 in Case No. CF-2002-13, should be one (1) year imprisonment, instead of the five (5) year sentence shown on the Judgments and Sentences. 63 O.S.2001, § 2-405.

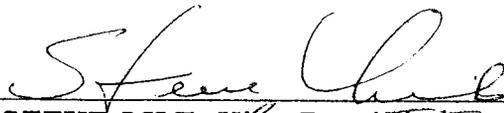
IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Pittsburg County revoking Appellant's suspended sentences in Case Nos. CF-2001-551, CF-2002-13, and CF-2002-110 should be, and is hereby, **AFFIRMED**. The District Court is directed to correct Appellant's Judgments and Sentences to reflect that his sentences on Count 2 in Case No. CF-2001-551, and on Count 2 in Case No. CF-2002-13, are one (1) year imprisonment.

IT IS SO ORDERED.

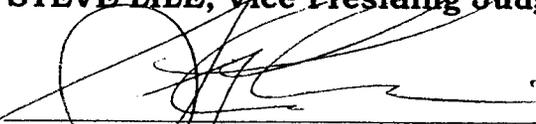
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 4th day
of May, 2004.



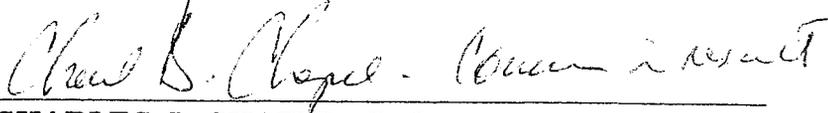
CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge

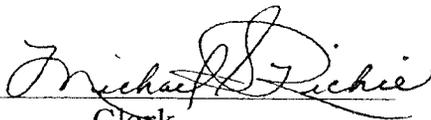


CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:



Clerk