

On April 4, 2012, the State filed a second application to revoke, alleging again that Harjo violated terms and conditions of probation by failing to make payments as ordered by the court. On April 26, 2012, the State filed an amended application to revoke alleging Harjo admitted using drugs. Harjo did not appear for the May 3, 2012 revocation hearing and a bench warrant was issued for his arrest. On March 6, 2013, the court was finally able to conduct a revocation hearing. The State did not present any evidence at the hearing, indicating that it was proceeding on the original application to revoke, to which Harjo had stipulated. Judge Woodliff revoked Harjo's remaining suspended sentences in full. From this judgment and sentence, Harjo appeals, raising the following propositions of error:

1. It was error for the trial court to revoke Appellant's suspended sentences based on violations for which he had already been punished; and
2. The revocation of Appellant's suspended sentences was an abuse of discretion because no evidence demonstrated that Appellant's failure to pay was willful.

Because the State confesses error in this matter, we **REVERSE** the district court's ruling revoking Harjo's remaining suspended sentences. It is unnecessary to address Harjo's second proposition of error in light of the reversal of the revocation of his suspended sentences.

On June 1, 2011, Harjo's suspended sentences were revoked on the basis of the State's original application to revoke filed March 21, 2007. The district court sentenced Harjo to jail and ordered him to complete a drug and alcohol program while incarcerated. The court stated that it would review the sentences upon

Harjo's successful completion of the program. On August 11, 2011, the court reviewed the sentences and re-suspended the remainder of Harjo's suspended sentences. At that point, Harjo had already been punished for the violations alleged in the State's original application to revoke.

Any subsequent attempt to revoke Harjo's remaining suspended sentences must be based upon a subsequent violation and an application to revoke alleging the new violations. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320.

The trial court erred when it revoked Harjo's suspended sentences at the March 6, 2013 revocation hearing based on the allegations in the March 21, 2007 application to revoke and Harjo's stipulation to the same.

DECISION

The revocation of Appellant's suspended sentences in Okmulgee County Case No. CM-2006-84 is **REVERSED**. 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 delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE DUANE WOODLIFF, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LEWIS, P.J.:
SMITH, V.P.J.: Concurs
LUMPKIN, J.: Concurs
C. JOHNSON, J.: Concurs
A. JOHNSON, J.: Concurs

RC/F