

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

NATHAN TODD HARVELL,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2014-248

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

MAY 11 2015

**MICHAEL S. RICHIE
CLERK**

SUMMARY OPINION

LUMPKIN, VICE PRESIDING JUDGE:

The Appellant, Nathan Todd Harvell, appeals from an order entered by the Honorable Paula Inge, District Judge, granting the State's motion to dismiss the applications to revoke as moot, and ordering that Appellant be remanded to the custody of the Department of Corrections ("DOC") to serve his five year terms of incarceration in Case Nos. CF-2005-34 and CF-2005-35 in the District Court of Coal County. In Case No. CF-2005-34, Appellant entered a plea of no contest to Unlawful Possession of Marijuana, Second and Subsequent. In Case No. CF-2005-35, Appellant entered a plea of no contest to Unlawful Possession of Controlled Drug. In both cases, he was convicted and sentenced to terms of five years, with the sentences all suspended upon the condition Appellant enter and complete the Drug Court program and pursuant to rules and condition of probation.

On December 15, 2005, the State filed applications to revoke Appellant's suspended sentences alleging he violated probation by failing to pay monies as

ordered, and by failing to enter in the Bryan or Cleveland County Drug Court. Appellant failed to appear at a scheduled hearing on the application to revoke and a bench warrant was issued for his arrest. Appellant appeared on February 11, 2014, and the revocation hearing was scheduled.

On March 13, 2014, the revocation hearing began before Judge Inge with the parties all agreeing that Appellant had not entered Drug Court and did not want to enter Drug Court. The State argued that pursuant to his Judgments and Sentences Appellant had already been sentenced to five years imprisonment with the DOC. The State moved to withdraw its applications to revoke and asked that the Judgments and Sentences be executed. Judge Inge agreed with the State's arguments; granted the motions to withdraw applications to revoke as moot; and ordered that the sentences be enforced by remanding Appellant to the custody of DOC. Counsel for Appellant asked about appeal rights since the plea withdrawal time had long since passed, and this was determined not to be a revocation. Judge Inge found that Appellant had been advised of his appeal rights when his plea was entered, with appeal times commencing at that point. Judge Inge stated that there is no pending application to revoke and that all she was doing was enforcing the Judgments and Sentences.

Appellant raises one proposition of error in this appeal arguing that, when the application to revoke was dismissed, the District Court lost its jurisdiction to sentence Appellant, thus the case must be remanded with instructions for dismissal. The State has filed a response agreeing that the

District Court lacked jurisdiction to revoke Appellant's suspended sentences when the prosecutor withdrew the pending application to revoke.

Although the Judgments and Sentences in Case Nos. CF-2005-34 and CF-2005-35 do state that Appellant is "[s]entenced to a term of **FIVE (5) YEARS** imprisonment"; they also state that the sentences are "all suspended" upon the condition of entering and completing Drug Court and pursuant to rules and conditions of probation. "Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of the person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose." 22 O.S.2011, § 991b(A); *e.g.* *Degraffenreid v. State*, 1979 OK CR 88, ¶ 10, 599 P.2d 1107, 1109 (an application to revoke a suspended sentence vests the trial court with the judicial power and authority to hear and determine the issue of revocation). Thus, once the State's motion to dismiss the applications to revoke in Case Nos. CF-2005-34 and CF-2005-35 was granted, Appellant's suspended sentences could not be revoked. *Id.*

DECISION

The order of the District Court of Coal County granting the State's motion to dismiss the applications to revoke as moot, and ordering that Appellant be remanded to the custody of DOC to serve his five year terms of incarceration in

Case Nos. CF-2005-34 and CF-2005-35 is **REVERSED** and **REMANDED** with instructions to dismiss. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COAL COUNTY
THE HONORABLE PAULA INGE, DISTRICT JUDGE

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OPINION BY: LUMPKIN, V.P.J.
SMITH, P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

RD/F

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