

FEB - 3 2004

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

ANTHONY JOHN HATHCOCK,)

Appellant,)

v.)

THE STATE OF OKLAHOMA,)

Appellee.)

No. F 2002-1481

SUMMARY OPINION
REVERSING AND REMANDING ACCELERATION OF
DEFERRED SENTENCE

Appellant, pro se, pled no contest November 6, 2001, in the District Court of Bryan County, Case No. CF-2001-373, to Omitting To Provide For Minor Child, and received a five year deferred sentence. Appellant was ordered to pay current support of \$100.00, per month and \$14,156.68 on arrearage at the rate of \$240.00 per month plus court costs.

On December 5, 2001, the State filed an Application to Accelerate Deferred Sentence for Appellant's failure to make his support payment. Following a hearing June 20, 2002, with Appellant appearing *pro se*, the Honorable Rocky L. Powers, Associate District Judge, found Appellant violated the terms of the deferred sentence. Appellant was sentenced November 13, 2002, to one year in the Department of Corrections. Appellant appeals from the November 13, 2002, acceleration of his deferred sentence.¹

¹ While there is some question regarding waiver by the Appellant's subsequent action, we do not need to address that issue due to the State's confession of lack of record supporting the

On appeal Appellant raised the following propositions of error:

1. Mr. Hathcock did not knowingly and voluntarily waive his right to be represented by counsel.
2. The State provided incompetent evidence to accelerate Mr. Hathcock's sentence.
3. The record in Mr. Hathcock's case is ambiguous as to what his deferred sentence was actually accelerated to, thus the order must be clarified.

As for Appellant's first proposition of error, in its Response Brief, the State agrees that the defendant's claim in this regard has merit and requests this Court remand Appellant's case for a new acceleration hearing should the Bryan County District Attorney's Office, in its discretion, choose to re-file the application to accelerate. Appellant requests the case be reversed and remanded for dismissal, or in the alternative, for the Court to apply Appellant's time of incarceration towards his fees, costs and judgments. However, Appellant never filed a motion to withdraw his plea of guilty in the District Court, and as a result, the only issue before this Court on appeal is the acceleration of the deferred sentence.

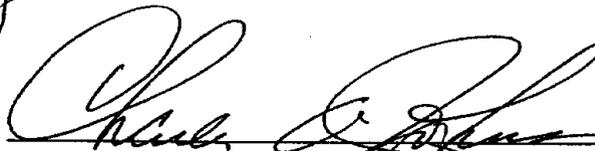
We agree, based upon a review of the record before this Court and the confession by the State, that Appellant's first proposition has merit and this case must be reversed and remanded to the District Court.

waiver of right to counsel in the acceleration proceeding. The question of waiver arises due to the fact, regardless of the timely filing of a notice of intent to appeal on November 21, 2002, Appellant subsequently filed a motion to modify sentence with representation by counsel and his sentence was modified on January 7, 2003. Subsequently, that sentence was revoked due to Appellant entering a plea to the motion to revoke on June 20, 2003. However, counsel representing Appellant on the motion to modify and motion to revoke was different than appellate counsel in this case.

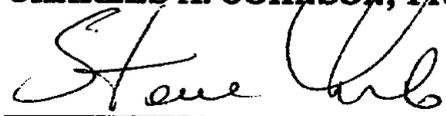
IT IS THEREFORE THE ORDER OF THIS COURT that the acceleration of Appellant's deferred sentence in the District Court of Bryan County, Case No. CF-2001-373, is **REVERSED AND REMANDED TO THE DISTRICT COURT FOR A NEW ACCELERATION HEARING ON THE MOTION TO ACCELERATE SENTENCE PREVIOUSLY FILED BY THE DISTRICT ATTORNEY WITH DIRECTION THAT THE DISTRICT COURT SHALL ENSURE APPELLANT IS PROPERLY REPRESENTED BY COUNSEL.**

IT IS SO ORDERED.

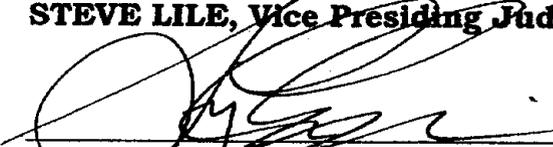
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 3rd day of February, 2004.



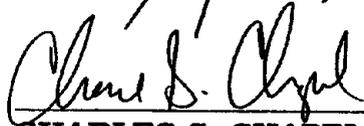
CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge

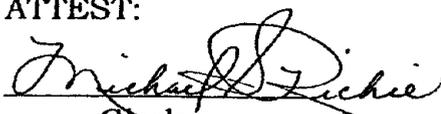


CHARLES S. CHAPEL, Judge



REBA M. STRUBHAR, Judge

ATTEST:



Clerk