

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUN - 3 2002  
JAMES W. PATTERSON  
CLERK

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

LLOYD SAMUEL HEATH, JR., )  
 )  
Appellant, )  
 )  
v. ) No. RE-2001-749  
 )  
THE STATE OF OKLAHOMA, )  
 )  
Appellee. )

**SUMMARY OPINION**  
**REVERSING REVOCATION OF SUSPENDED SENTENCE**

On April 28, 1993, Appellant entered a plea of guilty in Oklahoma County District Court, Case No. CF-93-2122, to Second Degree Burglary, Count I, and Concealing Stolen Property, Count II. Appellant was sentenced to three (3) years imprisonment on both counts, all suspended and ordered to run concurrently.

On December 25, 1993, Appellant was charged in Custer County District Court, Case No. CF-93-191 with Burglary in the Second Degree and was sentenced to the Department of Corrections. This new crime constituted a violation of the terms and conditions of Appellant's suspended sentences in Case No. CF-93-2122. Accordingly, on February 16, 1994, the State filed an Application to Revoke Appellant's suspended sentences and an alias warrant was issued that same day.

Appellant was released from the custody of the Department of Corrections on August 6, 1999, and was subsequently arrested on the outstanding alias warrant. On September 3, 1999, Appellant pled not guilty to the Application to Revoke. On April 20, 2000, a revocation hearing was commenced before the Honorable Ray C. Elliott, District Judge. At the hearing, the court determined Appellant had violated the terms and conditions of his probation and ordered Appellant's two, three year sentences be revoked in full in Case No. CF-93-2122. It is from that order that Appellant appeals.

Appellant raises one proposition of error on appeal. Appellant claims the order revoking his suspended sentences should be reversed because the State

failed to prosecute its application to revoke in a timely manner. Specifically, Appellant points out that the State filed its application on February 16, 1994. Thereafter, he entered a plea of not guilty on September 3, 1999. Yet, it was not until April 20, 2000, that the hearing on the application was held.

Appellant cites 22 O.S.1991, § 991b for authority that a court may revoke a suspended sentence only if competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose within twenty days after the entry of the plea of not guilty to the petition. In the case at bar, Appellant argues that while he did plead guilty to the petition within twenty days of the initially scheduled hearing, that hearing was continued several times and the trial court did not actually hold the hearing to revoke until almost six years after the application to revoke was filed.

Appellant also relies on *Cheadle v. State*, 1988 OK CR 226, 762 P.2d 995, wherein this Court vacated the revocation of a defendant's suspended sentence, after finding the State had waited almost five years between issuance of an alias warrant on the application to revoke and service of the warrant, even though the State knew the defendant's whereabouts the entire time. This Court found the State had had effectively abandoned its application to revoke by failing to act with due diligence.

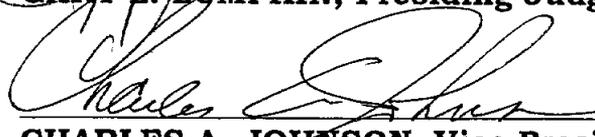
The State has filed a Response Brief in this case in which it concedes error.

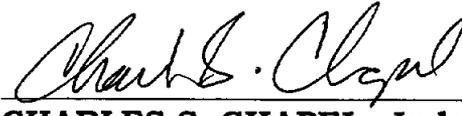
**IT IS THEREFORE THE ORDER OF THIS COURT**, the order of the Oklahoma County District Court revoking Appellant's suspended sentence in Case No. CF-93-2122 is **REVERSED** and this matter is **REMANDED** to the District Court with instructions to **DISMISS**.

**IT IS SO ORDERED.**

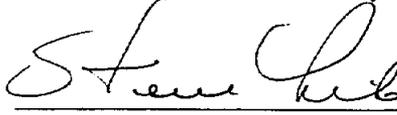
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 3<sup>rd</sup> day  
of June, 2002.

  
GARY L. LUMPKIN, Presiding Judge *Comes in results due to State's Confession of Error.*

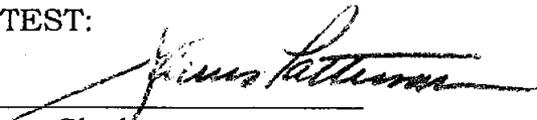
  
CHARLES A. JOHNSON, Vice Presiding Judge

  
CHARLES S. CHAPEL, Judge

  
RETA M. STRUBHAR, Judge

  
STEVE LILE, Judge

ATTEST:

  
Clerk