

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

AUG 14 2013

MICHAEL S. RICHIE  
CLERK

TODD AARON HENDERSON, )  
 )  
 Appellant, )  
 vs. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. RE-2012-590

SUMMARY OPINION

**C. JOHNSON, JUDGE:**

On April 15, 2009, Appellant Todd Aaron Henderson, represented by counsel, entered a guilty plea to a charge of Driving Under the Influence of Alcohol in Tulsa County Case No. CF-2009-525. Henderson's sentencing was deferred pending completion of the Tulsa County Drug Court program. On January 27, 2011, Henderson successfully completed drug court, and that same date the charge in his case was amended to a misdemeanor (Driving Under the Influence) and he was sentenced to one (1) year, suspended, subject to terms and conditions of probation. Judgment and sentence was entered January 27, 2011, and was filed of record January 28, 2011.

On January 14, 2012, Henderson was stopped in Broken Arrow, Oklahoma. He was subsequently arrested and charged with Driving under the Influence of Alcohol (second and subsequent offense), Possession of Drug Paraphernalia, Speeding, Unsafe Lane Use, and Failure to Pay Taxes Due to the State in Tulsa County Case No. CF-2012-347. On January 27, 2012, the State filed an

Application to Revoke Henderson's suspended sentence based on these new charges.

On June 26, 2012, the District Court of Tulsa County, the Honorable William J. Hiddle, Special Judge, revoked Henderson's suspended sentence in full. From this judgment and sentence, Henderson appeals and raises the following propositions of error:

1. The trial court lacked jurisdiction to revoke Henderson's suspended sentence; and
2. The trial court lacked competent evidence to revoke Henderson's suspended sentence.

The State has confessed error in this matter, conceding that the trial court lacked jurisdiction to revoke Henderson's suspended sentence. We therefore **REVERSE** and **REMAND** this matter to the District Court of Tulsa County with instructions to **VACATE** the order revoking Henderson's suspended sentence in Tulsa County Case No. CF-2009-525 and to **DISMISS** the State's application to revoke.

Henderson argues, and the State concedes that the application to revoke Henderson's suspended sentence was filed January 27, 2012, one day after Henderson completed service of his suspended sentence in Tulsa County Case No. CF-2009-525. Computation of the time for a suspended sentence begins on the day of sentencing. *Mullins v. State*, 1991 OK CR 39, ¶ 4, 808 P.2d 702. The trial court only has jurisdiction to revoke a suspended sentence if the application to revoke is filed prior to the expiration of the defendant's sentence. *Bewley v. State*, 1987 OK CR 160, ¶ 4, 742 P.2d 29, 31. The State's application to revoke was filed

one day after completion of Henderson's suspended sentence, therefore the trial court lacked jurisdiction to hear the State's revocation application.

As the State has confessed error in this matter, Henderson's second proposition of error is **MOOT**.

**DECISION**

The revocation of Appellant's suspended sentence in Tulsa County Case No. CF-2009-525 is **REVERSED** and **REMANDED** to the District Court of Tulsa County with instructions to **VACATE** the order revoking Henderson's suspended sentence in Tulsa County Case No. CF-2009-525 and to **DISMISS** the State's application to revoke.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE WILLIAM J. HIDDLE, SPECIAL JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY: C. JOHNSON, J.:**

LEWIS, P.J.: CONCUR

SMITH, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

A. JOHNSON, J.: CONCUR

RA/F