

MAR 2 2003

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

JOHN ANTHONY HESTER, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

No. RE-2002-667 FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

MAR 27 2003

MICHAEL S. RICHIE  
CLERK

**SUMMARY ORDER**  
**REVERSING REVOCATION OF SUSPENDED SENTENCE**

The Appellant, John Anthony Hester, has appealed to this Court from the revocation of his suspended sentence in Case No. CF-92-104 in the District Court of Caddo County, before the Honorable John E. Herndon, Special Judge. In that case, Appellant entered a plea of guilty to Sexual Battery, and was sentenced to a term of ten (10) years, with five (5) years to serve and the balance suspended under terms and conditions of probation.

On November 12, 1997, the State filed an application to revoke Appellant's suspended sentence alleging Appellant violated probation by being charged with crimes in Cleveland County Case No. CF-92-104, and in Grady County Case No. CF-97-298. On November 13, 1997, an order to issue bench warrant was filed in the District Court. The bench warrant was not executed until April 12, 2002. Also on April 12, 2002, Appellant was arraigned on the application to revoke and the revocation hearing was set for May 2, 2002.

On May 2, 2002, the hearing on the application to revoke was held before Judge Herndon. At the start of the hearing, Appellant orally moved to dismiss

the application to revoke based upon the State's failure to prosecute the case. Judge Herndon denied the motion to dismiss; found Appellant had violated probation, and revoked the five (5) year suspended. In this appeal, Appellant asserts one proposition of error claiming that the revocation of Mr. Hester's probation should be vacated because the State failed to diligently prosecute, even though officials in Caddo County knew when and where Appellant was serving other sentences.

As in *Cheadle v. State*, 1988 OK CR 226, 762 P.2d 995, it is apparent the State either abandoned their application, or improperly delayed in prosecuting the application. The application was filed and the bench warrant issued in November, 1997, but the bench warrant was not served until April 12, 2002. See *Cheadle*, 1988 OK CR 226 at ¶4, 762 P.2d at 996. The State offered no excuse for the delay and claimed only that Petitioner failed to ask that the State proceed on the application. *Id.* Moreover, the bench warrant was not served until Appellant had completed service of his sentence in Grady County District Court Case No. CF-97-298, which stated it would be served concurrently with this case. The delay precluded the sentences from being served concurrently. We find the very spirit of the revocation procedure was thwarted in this case. *Id.*

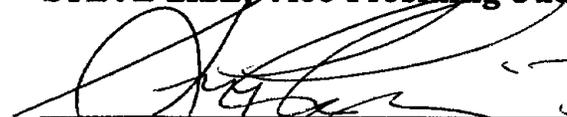
**IT IS THEREFORE THE ORDER OF THIS COURT** that the order of the District Court of Caddo County revoking Appellant's suspended sentence in Case No. CF-92-104 should be, and is hereby, **REVERSED** and **REMANDED** with instructions to vacate the order of revocation.

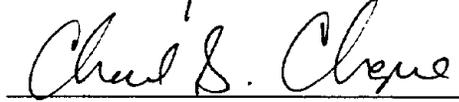
**IT IS SO ORDERED.**

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 27<sup>th</sup> day  
of March, 2003.

  
CHARLES A. JOHNSON, Presiding Judge

  
STEVE LILE, Vice Presiding Judge

 DISSENTS  
GARY L. LUMPKIN, Judge

  
CHARLES S. CHAPEL, Judge

  
RETA M. STRUBHAR, Judge

ATTEST:

  
Clerk