

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

JEFFREY ALLEN HOLDEN,)
)
 Appellant,)
vs.)
)
STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. RE-2007-1233

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

SUMMARY OPINION

APR 22 2009

MICHAEL S. RICHIE
CLERK

LUMPKIN, JUDGE:

On October 16, 2007, Appellant Holden, represented by counsel, entered a guilty plea to two (2) counts of First Degree Rape and one (1) count of First Degree Burglary in Oklahoma County Case No. CF-2005-5216. He was sentenced to forty-five (45) years, with all but the first twenty-five (25) years suspended for each of the rape counts, and twenty (20) years for the burglary. On October 2, 2007, the State filed an Amended Application to Revoke Suspended Sentence, alleging Holden violated the terms and conditions of his probation by mailing a letter to the victim. Holden was incarcerated at the time of the violation.

Holden's initial arraignment was conducted October 23, 2007. He entered a plea of not guilty, and his revocation hearing was set for November 7, 2007. Holden appeared on November 7, 2007, as did the State, but neither the State nor the District Court had the matter docketed for that date. On November 21, 2007, Holden was arraigned a second time, and again entered a plea of not guilty. His revocation hearing was set for December 5, 2007. Upon appearing at the

revocation hearing, Holden sought dismissal of the State's application, alleging his revocation hearing was not conducted within twenty (20) days of the entry of his guilty plea, as required by statute. *See*, 22 O.S.Supp.2005 § 991b(A). The District Court of Oklahoma County, the Honorable Tammy Bass LeSure, refused to dismiss the application with prejudice, and advised the State that if it chose to, it could re-file the application. The State requested permission to simply proceed with the hearing, and that request was granted. At the conclusion of the hearing, Judge Bass LeSure revoked two (2) years each of Holden's suspended sentences for each of the rape counts. From this judgment and sentence, Holden appeals.

This case raises the single issue of whether the District Court lost jurisdiction to hear the State's application to revoke when the revocation hearing was not held within twenty (20) days of Holden's initial arraignment. We find that it did. We **REVERSE** the District Court's finding and **REMAND** the matter to the District Court with instructions to **DISMISS**.

Both parties agree that Holden was initially arraigned and entered a not guilty plea on October 23, 2007. It is also agreed that an initial date of November 7, 2007 was set for the revocation hearing. For some reason, that date was not docketed on the District Court's calendar, and the State received no notice of the hearing. Holden was arraigned for a second time on November 21, 2007, and a second revocation hearing was set for December 5, 2007, at which time Holden's motion to dismiss for lack of jurisdiction was denied by the District Court and two (2) years of his suspended sentences were revoked.

The statute addressing revocation of suspended sentences is quite clear. The hearing revoking a defendant's suspended sentence must be held within twenty (20) days of the date the defendant enters his guilty plea, unless waived by both the defendant and the State. 22 O.S.Supp.2005 § 991b(A). The State is allowed one opportunity to dismiss and re-file the application, for good cause shown, within forty-five (45) days of the date of the dismissal of the revocation petition. The issue here is not one of whose fault resulted in the failure of the parties to ensure that a timely hearing was conducted. The question is whether the hearing was timely held. It was not. There is no provision in the statute allowing for a second arraignment when the parties fail to timely hold a revocation hearing within twenty (20) days of the initial arraignment. The State was given the opportunity to dismiss and re-file the application, but it chose not to do so. Instead, it requested permission to proceed with the hearing because its witnesses were present.

Holden's revocation hearing was not timely held. Holden's request to dismiss the application should have been granted. The District Court was without jurisdiction to hear the State's application to revoke.

DECISION

The order of the District Court of Oklahoma County in Case No. CF-2005-5216 is **REVERSED** with instructions 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. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE TAMMY L. BASS-LESURE, DISTRICT JUDGE

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OPINION BY: LUMPKIN, J.

C. JOHNSON, P.J.: CONCUR
A. JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LEWIS, J.: CONCUR

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