

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RODERICK LEANDREW JACKSON,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

No. F-2014-452

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 28 2015

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

Appellant was charged in Muskogee County District Court with Knowingly Concealing Stolen Property in Case No. CF-2011-126; Knowingly Concealing Stolen Property in Case No. CF-2011-1078; and Count 1 - Possession of Controlled Dangerous Substance, Count 2 - Attempting to Elude a Police Officer, Count 3 - Driving with License Suspended and Count 4 - Failure to Carry a Security Verification Form in Case No. CF-2013-475. Appellant pled guilty in these cases on September 18, 2013. The Honorable Robin Adair, Special Judge, sentenced Appellant pursuant to a plea agreement in CF-2011-126 to ten years imprisonment; in CF-2011-1078 to ten years imprisonment; and in CF-2013-475 to ten years imprisonment on Count 1, one year imprisonment on Count 2, one year imprisonment on Count 3 and thirty days imprisonment in Count 4. Judge Adair entered an order staying Appellant's sentences pending successful completion of Drug Court.

On April 30, 2014, the State filed an application to terminate Appellant's participation in Drug Court alleging Appellant committed multiple violations of his Drug Court performance contract. The State alleged Appellant failed to attend counseling sessions, missed Drug Court meetings, missed call-ins, failed to complete community service, failed to obtain job applications, tested positive for marijuana, was AWOL, failed to pay various fees, drove without a driver's license and tested positive for alcohol. Following a hearing on the State's application, the District Court terminated Appellant's participation in Drug Court and executed Appellant's previously stayed sentences pursuant to his Drug Court plea agreement. Appellant appeals the termination of his Drug Court participation.

In his first proposition, Appellant maintains that the termination of his participation in Drug Court was an abuse of discretion. He argues that this termination was based on previously punished violations of his Drug Court performance contract. Appellant claims he was sanctioned for each of the alleged violations prior to the filing of this application to terminate. Based on this, Appellant is requesting that this termination be reversed and he be reinstated in the Muskogee County Drug Court Program.

The State agrees this termination should be overturned and the appeal record supports this proposition. Appellant's most recent violation was alleged to have occurred on or before April 7, 2014, and Appellant was last sanctioned on April 14, 2014. An application to terminate was not filed until April 30,

2014. The State concedes error and agrees that Appellant should be reinstated in the Muskogee County Drug Court.

At the termination hearing the only evidence presented by the State was to have the Drug Court director list the alleged violations. In revoking or terminating a defendant from a drug court program, the court makes a factual determination involving the existence of a violation of the terms of the plea agreement or performance contract and whether disciplinary sanctions have been insufficient to gain compliance. *Hagar v. State*, 1999 OK CR 35, ¶ 11, 990 P.2d 894, 898; 22 O.S.Supp.2011, § 471.7(E). As no evidence was introduced at the hearing of any additional violations of his Drug Court Performance Contract since Appellant's most recent disciplinary sanction, and the State concedes this error, Appellant shall be reinstated in the Muskogee County Drug Court.

Finding merit to Appellant's first proposition of error, we do not find it necessary to address Appellant's remaining propositions of error.

DECISION

The termination of Appellant's participation in Drug Court in Muskogee County District Court Case Nos. CF-2011-126, CF-2011-1078 and CF-2013-475, is **REVERSED** and **REMANDED** for proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**TERMINATION APPEAL
FROM THE DISTRICT COURT OF MUSKOGEE COUNTY,
THE HONORABLE ROBIN ADAIR, SPECIAL JUDGE**

**APPEARANCES AT
TERMINATION HEARING**

Stephen Cale
Attorney at Law
624 South Denver Avenue, Suite 300
Tulsa, Oklahoma 74419
COUNSEL FOR THE DEFENDANT

Jason Perez
Assistant District Attorney
Muskogee County District Attorney's
Office
220 State Street
Muskogee, Oklahoma 74401
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

Virginia Sanders
Appellate Defense Counsel
P.O. Box 926
Norman, Oklahoma 73070
COUNSEL FOR APPELLANT

E. Scott Pruitt
Attorney General of Oklahoma
Keeley L. Miller
Assistant Attorney General
313 N.W. 21st Street
Oklahoma City, Oklahoma 73105
COUNSEL FOR THE STATE

OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

RA