



2008-477, Possession of Methamphetamine and Paraphernalia. Johnson subsequently completed Drug Court and on June 16, 2010, the applications to revoke were dismissed.

On March 1, 2011, the State filed an amended application to revoke. The State alleged Johnson had violated his probation by committing the new crimes of Eluding a Police Officer, Assault and Battery on a Police Officer and Possession of a Controlled Dangerous Substance (Methamphetamine). On March 14, 2011, a hearing was held before the Honorable Willard Driesel, District Judge. At the conclusion of the hearing, the court revoked ninety months of Johnson's suspended sentence. From that order of revocation, Johnson has perfected this appeal.

In his first assignment of error, Johnson asserts the District Court's imposition of an additional Victim Compensation Assessment after revoking his sentence was improper. Johnson contends 21 O.S.2001, § 142.18 authorizes the imposition of a Victim Compensation Assessment only at the time a defendant is originally convicted. Based on that interpretation, Johnson argues an order of revocation is not a "conviction" and as such, there is no legal authority for the imposition of a Victim Compensation Assessment at a revocation proceeding.

The State responds that Johnson's argument is moot because the Judgment and Sentence of record only reflects the original Victim Compensation Assessment imposed at Johnson's guilty plea. Therefore, the

State concludes, there is no error to correct.

In his Reply Brief, Johnson asserts that even though the Judgment and Sentence does not reflect the \$200 Victim Compensation Assessment imposed by Judge Driesel at the revocation hearing, the assessment that was orally ordered at the revocation hearing is still an error that needs to be corrected by this Court. We agree.<sup>1</sup>

Title 21 O.S.2001, §142.18(A) provides that a Victim Compensation Assessment can be ordered upon any person “convicted of, pled guilty to, or agreed to a deferred judgment.” In the case at bar, the revocation proceeding was not a hearing wherein Johnson was convicted of, pleading guilty to, or agreeing to a deferred judgment.<sup>2</sup>

Title 22 O.S.2010, § 991a(A)(1)(j) provides that when a defendant is *convicted* of a crime . . . the court shall either suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence . . . to pay a reasonable sum to the Crime Victims Compensation Board . . . for the benefit of crime victims. (Emphasis added.) Again, Johnson’s revocation hearing was not a hearing wherein he was convicted.

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<sup>1</sup> Oral pronouncements of sentences control over written conflicting orders. See *LeMay v. Rahhal*, 1996 OK CR 21, ¶¶18 – 20, 1996 OK CR 21.

<sup>2</sup> In *Wollen v. Coffman*, 1984 OK CR 53, ¶12, 676 P.2d 1375, 1376, this Court found that §142.18(A) and (B) are directed against any person “convicted”, that is, formally pronounced guilty upon a verdict or plea of guilty, and any person “pleading guilty”, that is, entering a plea of guilty without judgment. The latter description clearly embraces those receiving a deferred judgment upon a plea of guilty.

Therefore, we **FIND** that a victims compensation assessment is one that may be ordered either at the time of sentencing, or at any time during the suspended sentence. However, the assessment may not be ordered twice; it's an either or proposition for the sentencing court. In the case at bar, Johnson was ordered to pay a victims compensation assessment at the time he was sentenced for Feloniously Carrying a Firearm. Therefore, there was no legal authority for imposition of an additional victims compensation assessment at the revocation hearing. The assessment of \$200.00 is hereby **VACATED**.<sup>3</sup> .

In his final assignment of error, Johnson asks this Court to modify the length of the revocation order because of the advancements he had made while on probation. A District Court's decision to revoke a suspended sentence, in whole or in part, is reviewable under the abuse of discretion standard. *Hampton v. State*, 2009 OK CR 4, 203 P.3d 179, 182. Based on Johnson's past performance while on probation, we find no abuse of discretion by the District Court.

#### **DECISION**

The order of the District Court of McCurtain County revoking part of James Parnell Johnson's suspended sentence in Case No. CF-2005-263 is **AFFIRMED**. However, the assessment of a \$200.00 Victim Compensation Assessment imposed at the revocation proceeding is **VACATED**. Pursuant to

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<sup>3</sup> Our finding does not preclude a victims compensation assessment being ordered against Johnson if he were ever convicted of Assault and Battery Against a Police Officer.

Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF McCURTAIN COUNTY  
THE HONORABLE WILLARD DRIESEL, DISTRICT JUDGE**

**ATTORNEYS AT TRIAL**

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**OPINION BY: LUMPKIN, J.:**

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

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