

Dangerous Substance. In Case No. CF-2014-100, Appellant entered pleas of guilty to False Personation of Another to Create Liability and Public Intoxication. Appellant was sentenced to the Drug Court program. According to the terms of the plea agreement, if Appellant successfully completed the program, the charges would be dropped. If he did not successfully complete the program, he would be sentenced to 15 years imprisonment.

On November 30, 2015, Appellant was charged with new offenses in Seminole County District Court Case No. CF-2015-453. On December 17, 2015, the State filed applications to remove Appellant from the Drug Court program. On February 16, 2016, a hearing was held on the State's application. The trial court sanctioned Appellant by ordering he be confined for six months in the Department of Corrections. The State's application to terminate Appellant from Drug Court was, however, denied.

On August 18, 2016, Appellant entered pleas of guilty to charges brought in CF-2015-453. Pursuant to a plea agreement he received a 15 year suspended sentence for Possession of a Controlled Dangerous Substance and one year suspended sentences for Possession of Drug Paraphernalia and Resisting an

Officer.

On July 5, 2017, Appellant was charged with felony Driving Under the Influence of Alcohol in Seminole County District Court Case No. CF-2017-176. On July 26, 2017, the State filed the second application to terminate Appellant from the Drug Court program. On January 25, 2018, a hearing was held on the State's application. At the conclusion of the hearing Judge Smith revoked the suspended sentences previously imposed in Case No. CF-2015-453 and terminated Appellant from the Drug Court program in the remaining cases. Consistent with the Drug Court contract, Judge Smith sentenced Appellant to concurrent 15 year prison terms.

At the termination hearing the State called Oklahoma Highway Patrol Trooper Dion Wild. Trooper Wild testified he stopped Appellant's car at approximately 1 o'clock on the morning of July 2, 2017, because it was traveling 108 miles per hour in a 65 mile per hour speed zone. Appellant was arrested because he showed physical signs of intoxication and he performed poorly on a series of sobriety tests. Appellant agreed to a breath test that showed his blood alcohol content to be .11. The trooper testified the permissible limit was .08.

The State also called Tammy Wall, the Drug Court coordinator. Ms. Wall testified Appellant started the five-phase program on May 15, 2014. After serving a six-month sanction in the Department of Corrections, Appellant reentered the program on May 15, 2017. Since the first termination hearing held some 23 months before, Appellant tested positive three times for the presence of methamphetamine. He had two “administrative positives” during this time span – meaning he failed to report for testing. Appellant also tested positive for the presence of marijuana and amphetamine in September of 2017. Ms. Wall recognized Appellant was capable of making progress, but the culmination of these behaviors combined with the new alcohol charge caused her to recommend Appellant be terminated from the program.

The defense called Thomas Gates, Appellant’s rehabilitation counselor. Mr. Gates testified it sometimes takes a “major life shakeup” for “somebody to turn around.” Mr. Gates believed the driving under the influence arrest presented the “turn around” moment for Appellant and it had transformed him into “the model of what I would hope would happen after a relapse.”

Appellant brings this appeal asserting two propositions of error.

I.

THE TRIAL COURT ABUSED ITS DISCRETION BY TERMINATING APPELLANT FROM DRUG COURT, AS APPELLANT HAD EMBRACED RECOVERY AND BECOME A “MODEL” PARTICIPANT.

ANALYSIS

“The decision to revoke or terminate a Drug Court defendant is within the trial judge’s discretion. *Lewis v. State*, 2009 OK CR 30, ¶ 10, 220 P.3d 1140, 1143. An abuse of discretion involves “a clearly erroneous conclusion.” *Farthing v. State*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209.

Appellant was given an opportunity to complete the Drug Court program in February 2016 when the court rejected the State’s first application to terminate and chose instead to sanction him with a six month prison term. Thereafter, Appellant failed six drug screenings. Additionally, the State’s evidence established, by at least a preponderance of the evidence, that Appellant committed the new offense of driving while intoxicated. *See Edwards v. State*, 1987 OK CR 276, ¶ 8, 747 P.2d 968, 970 (a preponderance is sufficient to

establish a probation violation). The violation of even one condition of probation is sufficient to warrant termination. *Wallace v. State*, 1977 OK CR 154, ¶ 8, 562 P.2d 1175, 1177. Appellant's termination from Drug Court under the circumstances presented was not an abuse of discretion. This proposition of error is denied.

II.

APPELLANT'S SENTENCE FOR PUBLIC INTOXICATION EXCEEDS THE STATUTORY MAXIMUM AND REQUIRES MODIFICATION.

ANALYSIS

The punishment range for Public Intoxication is five to 30 days confinement. 37 O.S. Supp.2013, § 8. The correct punishment range appears on the Information filed in Case No. CF-2014-100 and on the plea form. However, on the Judgment and Sentence it appears Appellant was sentenced to one year for this offense. Appellant seeks modification of the Judgment and Sentence.

We construe Appellant's request as a request for an order nunc pro tunc. Accordingly, we remand Seminole County District Court Case No. CF-2014-100 to the District Court with instructions to address the issue raised in Appellant's second proposition of

error filed in this Court on August 15, 2018, in Case No. F-2018-375.

DECISION

The order of the District Court of Seminole County terminating Appellant from Drug Court and sentencing him in accordance with the plea agreement in Case Nos. CF-2014-6 and CF-2014-100 should be, and is hereby, **AFFIRMED**. Case No. CF-2014-100 is **REMANDED** with **INSTRUCTIONS**. The order of revocation of the suspended sentences in Case No. CF-2015-453 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued forthwith upon the filing of this decision with the Clerk of this Court.

AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY
THE HONORABLE TRISHA D. SMITH, SPECIAL JUDGE

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KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

RA/F