

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

RICHARD A. KASIAH, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

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

Case No. RE-2005-863

NOV 03 2006

MICHAEL S. RICHIE  
CLERK

**ORDER GRANTING RELIEF IN PART IN REVOCATION APPEAL**

On April 1, 2005, Appellant entered pleas of guilty in Case No. CF-2005-122, to two counts of Burglary in the Second Degree, in Case No. CF-2005-123 to Knowingly Concealing Stolen Property, and in Case No. CF-2005-145, to four counts of Burglary in the Second Degree. Appellant was sentenced to seven (7) years incarceration on both counts in CF-2005-122, to five (5) years incarceration in Case No. CF-2005-123, and seven (7) years incarceration on all four counts in Case No. CF-2005-145. The sentences were suspended and ordered to be served concurrently.

On June 2, 2005, the State filed an Application to Revoke Suspended Sentence.<sup>1</sup> On August 31, 2005, a hearing was held before the Honorable Curtis DeLapp, Associate District Judge. At the conclusion of that hearing, Appellant's sentences were revoked and ordered to be served consecutively.

In his first proposition of error, Appellant argues the District Court lacked authority to order his revoked sentences to run consecutively. We agree

---

<sup>1</sup> In the application, the State asserted Appellant had violated the terms and conditions of his probation by committing the new crimes of assault and battery with a deadly weapon and robbery with a weapon, in Washington County Case No. CF-

and the State concedes error in this regard. *See Degraffenreid v. State*, 1979 OK CR 88, 599 P.2d 1107. Accordingly, Appellant is entitled to relief in that the District Court's order of revocation is **MODIFIED** so that the sentences are ordered to run concurrently, as originally ordered.

In his final assignment of error, Appellant asserts he is entitled to time served in the county jail. This Court has held that the decision to give credit for time served is up to the sound discretion of the trial court. *See Shepard v. State*, 1988 OK CR 97, 756 P.2d 507, 602. Based on the fact Appellant was serving time on a new, unrelated charge, we find no abuse of discretion in the District Court's decision to not award credit for time served.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the order of the Washington County District Court revoking Appellant's suspended sentences in Case Nos. CF-2005-122, CF-2005-123 and CF-2005-145 is **AFFIRMED**, but **MODIFIED** so that the revoked sentences are ordered to run **CONCURRENTLY** as originally ordered. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

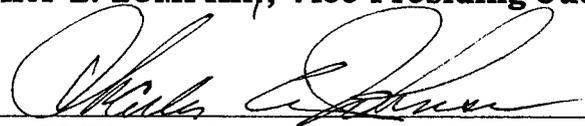
**IT IS SO ORDERED.**

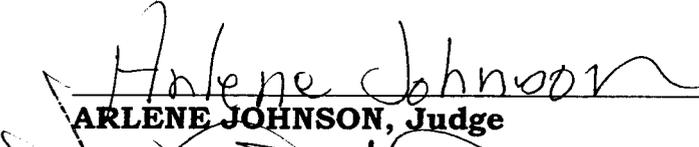
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 3<sup>rd</sup> day  
of November, 2006.

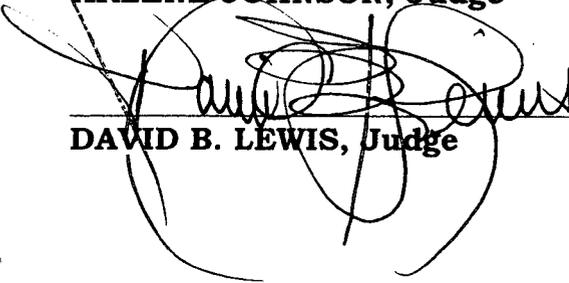


**CHARLES S. CHAPEL, Presiding Judge**

  
GARY L. LUMPKIN, Vice Presiding Judge

  
CHARLES A. JOHNSON, Judge

  
ARLENE JOHNSON, Judge

  
DAVID B. LEWIS, Judge

ATTEST:  
  
Clerk

F/RA