



On May 23, 2008, the State filed an Application to Revoke Suspended Sentence, alleging Appellant violated the terms and conditions of his probation. An Amended Application to Revoke Suspended Sentence was filed on June 12, 2008, alleging additional probation violations. On July 30, 2008, after a hearing on the State's application, the Honorable Ray C. Elliott, District Judge, revoked Appellant's suspended sentences in full. From this judgment and sentence Appellant appeals and raises the following issues:

1. The trial court's written order revoking Appellant's suspended sentence for Count 2 in Oklahoma County Case No. CF-2007-802 was incorrect and requires issuance of an order *nunc pro tunc*; and
2. The District Court abused its discretion by revoking Appellant's suspended sentences in full.

The order revoking Appellant's suspended sentences in full is **AFFIRMED**. The portion of the revocation order revoking Appellant's suspended sentence for Count 2 in Case No. CF-2007-802 is **VACATED**.

Both parties agree that at the time the State filed its Application to Revoke Appellant's suspended sentence for Count 2 of Oklahoma County Case No. CF-2007-802, Appellant had already served the probationary sentence for that offense. The District Court had no authority to revoke a suspended sentence that had been fully served. Appellant requests issuance of an order *nunc pro tunc* to correct the error. However, since the District Court had no authority to revoke an executed sentence, the appropriate remedy is to vacate the incorrect portion of the order revoking Appellant's suspended sentence.

We find no merit in Appellant's claim that revocation of his suspended sentences was excessive. The standard of review here is abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565; *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453; *Sparks v. State*, 1987 OK CR 247, ¶ 5, 745 P.2d 752. Despite being given suspended sentences for his numerous offenses, Appellant failed and refused to take advantage of the District Court's leniency, choosing instead to violate the terms and conditions of his probation. We find nothing in the record presented to this Court indicating that the District Court abused its discretion in revoking Appellant's suspended sentences in full.

#### **DECISION**

The revocation of Appellant's suspended sentences in Oklahoma County Case Nos. CF-2007-802 and CF-2007-4931 is **AFFIRMED**. The portion of the District Court's order revoking Appellant's suspended sentence for Count 2 in Oklahoma County Case No. CF-2007-802 is **VACATED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE is ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, THE  
HONORABLE RAY C. ELLIOTT, 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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