

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 23 2004

MICHAEL S. RICHIE
CLERK

WILLIAM ERIC KNOLES,)
)
 Appellant,)
vs.)
)
STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-2003-918

SUMMARY OPINION

On April 10, 2002, Appellant, represented by counsel, entered a plea of *nolo contendere* to a charge of Driving Under the Influence (DUI) in Case No. CF-2002-78 in the District Court of Pottawatomie County. Appellant was sentenced to two (2) years, all suspended, fined \$250.00 and sentenced to 100 hours of community service. On August 12, 2003, the State filed an Application to Revoke Appellant's suspended sentence, charging Appellant with a subsequent DUI committed in Case No. CF-2002-324, also in Pottawatomie County. On October 28, 2002, Appellant entered a guilty plea in Case No. CF-2002-324 with the understanding that if Appellant successfully completed Drug Court, the pending charges against him would be dismissed. The State agreed to delay execution of Appellant's sentence in Case No. CF-2002-78 pending Appellant's successful completion of the Drug Court program.

On May 1, 2003, the State filed an application to Accelerate Sentencing and Revoke Appellant from Drug Court, alleging that Appellant had violated the

terms and conditions of his Drug Court program, was sanctioned by the court on four (4) separate occasions, and that the sanctions imposed by the court had been insufficient to gain Appellant's compliance with the Drug Court Program and insufficient to change Appellant's behavior. At the time the State filed its application to terminate Appellant from Drug Court he had completed service of his most recent five (5) day sanction imposed by the District Court for violating the terms of his Drug Court program. The State's application to revoke did not indicate that Appellant had committed any additional violations of his Drug Court program at the time the application was filed.

The revocation/termination hearing was conducted August 5, 2003, at which time Appellant's suspended sentence in Case No. CF-2002-78 was revoked in full and he was terminated from Drug Court. From this judgment and sentence, Appellant appeals.

Appellant raises two propositions of error in this appeal. He alleges that the District Court abused its discretion in revoking Appellant from Drug Court, and that it was error for the trial court to terminate Appellant from Drug Court based on violations for which Appellant had already been punished. We find merit in Appellant's second proposition of error and therefore find it unnecessary to address his first allegation of error.

Appellant alleges at his second proposition of error that the trial court terminated him from Drug Court based on four violations of the terms of his Drug Court program. Appellant claims that he was sanctioned for each of those

violations and that terminating him from Drug Court based upon these violations constituted double jeopardy.

The State argues that Appellant was not terminated for the four infractions; he was terminated because the sanctions failed to change his behavior. Moreover, the State claims that if this Court adopted Appellant's reasoning, the Drug Court program could never impose a sanction if it believed a defendant's behavior might not improve since the acts which gave rise to the sanctions would almost always be part of the reason for the removal. The State argues that this would have an unnecessary chilling effect on achieving the purpose for which Drug Court was established.

As this Court noted in *Hagar v. State*, 1999 OK CR 35, 990 P.2d 894, Drug Court cases are similar to situations where a defendant's sentence is deferred pending successful completion of certain terms of probation. *Hagar*, ¶ 9. In revoking or terminating a defendant from Drug Court, 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. See, 22 O.S.Supp. 1998, § 417.7(E); *Hagar* at ¶ 11. In order to meet the requirements of due process, the State must set forth the reasons for terminating a defendant from Drug Court with such clarity that the defense is able to determine the reason being submitted as the grounds for termination, allowing the defendant to prepare his defense to the allegations. *Hagar* at ¶ 14.

Appellant had violated terms of the Drug Court agreement on prior occasions, and the District Court, in accordance with the directives of the Drug Court statute, sanctioned him for each of these violations. However, just as in revoking or accelerating a suspended or deferred sentence, once a probation violation has resulted in sanctions (or some other punishment short of revocation of the suspended, or acceleration of the deferred, sentence), the State must allege some additional or different violation in any subsequent application to revoke or accelerate the defendant's sentence. Revocations and accelerations of suspended and deferred sentences are based upon subsequent offenses, not prior convictions or violations of probationary terms that have already been the subject of a revocation or acceleration hearing. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320.

Likewise, once a sanction is imposed for a probation violation in a Drug Court case, the State may no longer use that particular violation as the basis for a subsequent application for sanctions or to terminate the defendant's participation in Drug Court. To allow the State to simply allege that cumulative violations warrant termination without showing some additional violation of probationary terms would mean that the latest sanction was simply additional punishment, and not imposed in hopes of altering the defendant's behavior. The State must choose its remedy: it can seek sanctions for a probation violation or seek termination from Drug Court as a result of a violation. It cannot use a prior violation, for which sanctions have been imposed, as the basis of a Drug Court

termination application. Furthermore, there must be some violation of probationary terms alleged as part of the basis for seeking Drug Court termination. To simply allege that prior sanctions failed to result in a behavioral change is insufficient.

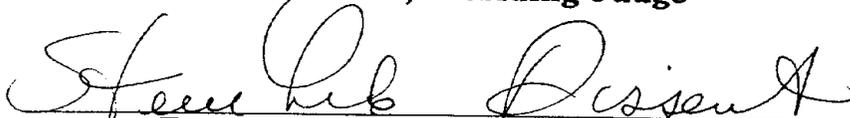
We find merit in Appellant's claim and **REMAND** this matter to the District Court of Pottawatomie County with instructions to **REVERSE** the order terminating Appellant from Drug Court based upon the State's May 1, 2003 application filed in Case No. CF-2002-78. Appellant is to be re-admitted to the Drug Court program, subject to the terms and conditions of his original Drug Court agreement.

IT IS SO ORDERED.

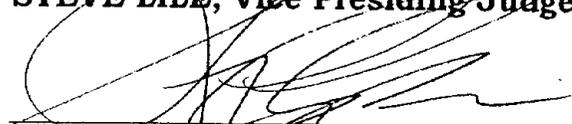
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 23rd day of August, 2004.



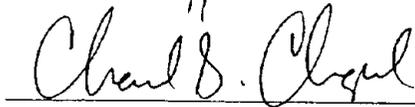
CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:



Clerk