

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DECARLOS MARQUIS LATHAM,
Appellant,

-vs.-

THE STATE OF OKLAHOMA,
Appellee.

NOT FOR PUBLICATION

No. RE-2015-180

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR - 8 2016

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

HUDSON, JUDGE:

In the District Court of Oklahoma County, Case No. CF-2013-6027, Appellant, Decarlos Marquis Latham, while represented by counsel, entered pleas of guilty to two counts of Rape in the First Degree in violation of 21 O.S.2011, § 1111. In accordance with a plea agreement, the Honorable Cindy H. Truong, District Judge, on September 10, 2013, sentenced Appellant to concurrent terms of twelve (12) years imprisonment on each count, but conditionally suspended execution of those terms under written rules of probation that required Appellant, among other things, to be transferred to the State of Michigan and to register there as a sex offender. (O.R. 10-26.)

On September 18, 2014, the State filed an Application to Revoke Suspended Sentence alleging that Appellant had violated his probation by "committing new crime of Felon in Possession [sic] of a Firearm in Wayne County Michigan, Case Number 14-6304-01-FH." (O.R. 28.) Petitioner was eventually returned from Michigan, and an evidentiary hearing was conducted on the State's Application. At the conclusion of that February 18, 2015, hearing, Judge Truong revoked the suspension order in full on finding that Appellant had committed the crime alleged in the Application. (O.R. 31-36, 39.)

Appellant timely appeals this final order of revocation, and he raises the following propositions of error:

1. The State failed to present sufficient competent evidence to prove the allegations in its application to revoke Appellant's suspended sentence in violation of the due process clauses of the federal and state constitutions.
2. The trial court abused its discretion and violated Appellant's due process right to confront witnesses by revoking Appellant's sentence based entirely upon hearsay evidence, thereby depriving him of a fundamentally fair hearing.

Having thoroughly considered these propositions of error and the entire record before this Court, including the original record, transcripts, and briefs of the parties, the Court **FINDS** Appellant has shown error requiring reversal of the revocation order.

There are two methods by which the State can prove a defendant committed a new offense in violation of his probation: (1) the State may, by a preponderance of the evidence, present proof that the defendant committed each of the elements constituting the new offense; or (2) the State may present a judgment by a court of competent jurisdiction showing the defendant was found to have committed the new offense and that such judgment has become final. See *Stoner v. State*, 1977 OK CR 212, ¶ 6, 566 P.2d 142, 143 (finding that the State should be held "to strict proof of the finality of a judgment and sentence relied on as evidence to revoke a suspended sentence" or shall otherwise be required to "prove each element of the offense alleged as a violation of the terms and conditions of probation, since such proof by a preponderance of the evidence would withstand a collateral attack even if a conviction for the same offense were reversed on appeal").¹ Petitioner's

¹ Accord *Pickens v. State*, 1989 OK CR 58, ¶ 12, 779 P.2d 596, 598 "[W]hen the State introduces a certified or authenticated copy of the judgment and sentence of the predicate

Proposition I argues the District Court had insufficient evidence to revoke his suspended sentence because the evidence in his case did not comply with either of these methods.

The State's case for revocation consisted of uncertified copies of documents from the State of Michigan titled "Assignment to Youthful Trainee Status" and "Order of Probation" and several attachments to those documents. (State's Ex. 1.) According to these items, Appellant had been placed on probation under the Michigan's Holmes Youthful Trainee Act for the crimes of Felon in Possession of a Firearm, Carrying a Concealed Weapon, and Felony Firearm, all committed on July 10, 2014.

The State also presented the testimony of an employee from the investigations section of the District Attorney's Office. Her testimony was used to introduce a National Crime Information Center (NCIC) report run by her office on Appellant. (Tr. 12-13.) That report showed the occurrence of Appellant's Oklahoma County conviction in the case at hand, and it also stated that Appellant had been "convicted" on the three Michigan offenses listed above. (State's Ex. 2.) This witness, however, had no personal knowledge of the truth or accuracy of the Michigan entries in that NCIC report. (O.R. 17-18.)

Appellant objected to the admission of both these exhibits and to the witness's testimony concerning the latter exhibit's content. Lastly, the State

conviction as a basis for revocation of a suspended sentence, it must also offer strict proof of the finality of that predicate judgment and sentence."); *Sams v. State*, 1988 OK CR 137, ¶¶ 5-6, 758 P.2d 834, 835 (at revocation hearing, State offered a certified copy of an Order on Sentence from the State of Oregon to prove defendant's probation violation, and although that document showed the defendant had plead guilty in Oregon to First Degree Theft, the prosecutor "failed to show either that the Oregon conviction was a final judgment, or any of the elements of the crime reflected in the Order on Sentence"; therefore, Court vacated the revocation order appealed and held: "[W]e continue to adhere to our language in *Stoner* The import of this language is clear—the State must show the finality of a judgment or the facts to support one. In this case, the State did neither.").

introduced the Summary of Facts from Appellant's September 10, 2013, plea and sentencing proceedings in Oklahoma County. (State's Ex. 3.) The State presented no further evidence. Appellant demurred to the State's case; however, Judge Truong found that Appellant committed the crime of Felon in Possession of a Firearm in Wayne County, Michigan, and had thus violated his probation as alleged in the Application to Revoke. (O.R. 33, 39; Tr. 32.)

Appellant now argues on appeal that the State did not prove his commission of the new offense it alleged in its Application to Revoke—the sole ground for revocation sustained by Judge Truong. Among other things, Appellant argues such proof fell short of that required by law as it rested on uncertified documents that did not establish the Michigan judgment was final.

The State's Answer brief concedes error has occurred here. More specifically, it concedes that there was no proof that the judgment reflected in the Michigan documents was final. We agree this essential requirement of finality was lacking in the evidence before the District Court, and that its order of revocation must therefore be reversed as set forth below. Having so found, we need not reach the issue concerning the use of uncertified documents from the Michigan court proceedings, or the issue of whether those court documents (even with proof of finality and proper authentication) would have been adequate to show a "conviction" or other judgment sufficient for revocation.² Because we grant relief under Proposition I, Appellant's remaining proposition of error is rendered moot.

² At the revocation hearing, defense counsel advised that if Appellant successfully completed his Michigan Youthful Trainee probationary program, he would not be left with a conviction or a record of any conviction. (O.R. 21-22.) Counsel suggested, "That's why the State can't get a record of this because right now nothing exists to say that he has a conviction for this offense." (Tr. 22.)

DECISION

The final order of revocation of February 18, 2015, in Oklahoma County District Court Case No. CF-2013-6027 is hereby **REVERSED AND REMANDED** for further proceedings consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY,
THE HONORABLE CINDY H. TRUONG, DISTRICT JUDGE

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OPINION BY: HUDSON, J.

SMITH, P.J.:	CONCUR
LUMPKIN, V.P.J.:	CONCUR
JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR

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