

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUN 13 2002
JAMES W. PATTERSON
CLERK

JEFFERY EARL LEONARD,)
)
Appellant,)
)
v.)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

No. RE 2001-0911

SUMMARY OPINION

On September 30, 1999, Appellant pled guilty in the District Court of Pontotoc County, Case No. CF-99-270, to Count 1 – Burglary Second Degree and Count 2 – Larceny of Automobile. Appellant was sentenced to five years on each count to be served concurrently and “successful completion of D.O.W.C. at Bill Johnson Correctional Center”. On March 30, 2000, by agreement of the parties, Appellant’s sentence was modified to five years all suspended and with rules and conditions of probation and special conditions. Appellant was also ordered to attend drug or alcohol counseling as directed, to provide proof of attendance as directed, and to be subject to random UA’s as directed.

On April 19, 2001, the State filed an application to revoke Appellant’s suspended sentence alleging Appellant committed the offense of operating a motor vehicle while under the influence of intoxicating liquor. A revocation hearing was held May 31, 2001. The record reflects Appellant stipulated to the State’s application to revoke and pursuant to a plea agreement, Appellant was

ordered to complete the HOW program and then complete Drug Court. Appellant signed a Drug Court contract. The May 31, 2001, order of the District Court was not appealed to this Court.

On July 10, 2001, the State filed an "Application to Terminate Drug Court Participation and Sentence Defendant" alleging Appellant failed to complete the HOW program. Following a hearing July 23, 2001, the trial judge found Appellant violated the rules and conditions of probation by failing to complete the HOW program as agreed and terminated Appellant from the Drug Court program. The order issued September 26, 2001, "revoked" Appellant's suspended sentence. Appellant was sentenced to four years, six months incarceration. From this order, Appellant appeals.

On appeal Appellant raises the following proposition of error:

To the extent the [District] Court treated this case as a revocation, the [District] Court had no jurisdiction to revoke Mr. Leonard's suspended sentence for his failure to complete the HOW Foundation Program. To the extent this was treated as termination from Drug Court, the trial court abused its discretion by revoking Mr. Leonard from the Drug Court Program and violated Mr. Leonard's right to due process.

The State responded:

The trial court had jurisdiction to revoke the Defendant's suspended sentence, thus the revocation was proper. However, should this Court determine that the Defendant was a Drug Court participant, and the hearing was a termination from Drug Court, termination was proper and no abuse of discretion occurred.

The transcript of the July 23, 2001, hearing reveals that the trial judge and the attorneys were confused about the type of proceeding and were unsure whether this hearing was a revocation hearing or a Drug Court termination

hearing. They were unsure whether Appellant was ever in the Drug Court program. The Drug Court case manager testified she was "not certain", that she did not know, whether Appellant was a member of Drug Court. The Drug Court case manager was the only witness the State called to testify.

It is not possible for this Court to determine whether the trial judge abused his discretion when it is not clear to this Court what type of proceeding we have been asked to review. What is clear is that Appellant did not appeal from the May 31, 2001, order revoking his suspended sentence and that matter is not before us. Appellant now appeals from the July 23, 2001, ruling on the State's application to terminate Drug Court participation. However, the record does not establish Appellant was even "in" Drug Court.

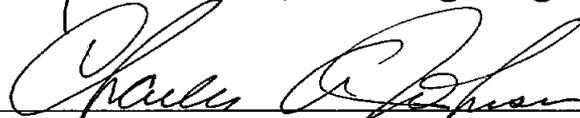
IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court ruling upon the State's application to terminate Appellant's Drug Court participation is **REVERSED WITH INSTRUCTIONS TO DISMISS.**

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13th day
of June, 2002.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge

I concur in the results reached due to the fact I interpret this order to mean the Revocation order remains in effect & Appellant's suspended sentence of 5 years has been revoked.

Charles S. Chapel

CHARLES S. CHAPEL, Judge

Reta M. Strubhar

RETA M. STRUBHAR, Judge

Steve Lile

STEVE LILE, Judge

ATTEST:

James Patterson

Clerk