



was conducted before the Honorable Lee Turner, Special Judge, with Appellant appearing *pro se*. At the conclusion of the evidence, Judge Turner bound Appellant over for trial on the charges. On July 29, 2015, the State filed an amended motion to revoke Appellant's suspended sentence adding a second violation of probation that, on or about July 22, 2015, Appellant committed the new crimes of Count 1 - Possession of Controlled Dangerous Substance, Methamphetamine, after former conviction of two or more felonies; and Count 2 - Unlawful Possession of Drug Paraphernalia, misdemeanor, as charged in Kay County District Court Case No. CF-2015-578. On August 15, 2015, the revocation hearing was conducted before Judge Bandy, with Appellant appearing *pro se*. After hearing the evidence and arguments, Judge Bandy found that Appellant had violated probation as alleged, and revoked eight years of Appellant's suspended sentences.

Appellant has appealed from the partial revocation of her suspended sentences claiming the trial court abused its discretion in revoking her suspended sentences after forcing her to proceed throughout her revocation proceeding without the assistance of counsel and without a valid waiver of her right to counsel in violation of the 14<sup>th</sup> Amendment to the United States Constitution; Section 7 of Article II of the Oklahoma Constitution; and Section 991b of title 22 of the Oklahoma Statutes. In its response, the State concedes the District Court should have conducted further inquiry after Appellant posted bond in order to allow Appellant a chance to rebut the statutory presumption of non-indigence with regard to appointment of counsel.

A person whose suspended sentence is being considered for revocation shall have a statutory right to counsel at the revocation hearing. 22 O.S.Supp.2012, § 991b(D). Both Appellant and the State agree that counsel must be provided at state expense for those who are indigent in order for all such persons to enjoy this statutorily mandated right.

The qualifications for determining indigence and entitlement to court-appointed counsel are set out in the Rules of this Court, and include the ability of the defendant to make bond. Rule 1.14(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016). The Oklahoma Legislature has declared that if the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption, and shall be prima facie evidence, that the defendant is not indigent. 22 O.S.2011, § 1355A(D); 20 O.S.2011, § 55. However, the evidence that a defendant has posted bond can be rebutted by sufficient proof of indigent status. *See Smith v. State*, 2007 OK CR 6, ¶ 6, 155 P.3d 793, 795. In order to insure that a defendant is not improperly denied counsel to which he or she is statutorily entitled, the district court must make a record inquiring about the defendant's financial status and reflecting that the defendant understands that the presumption of non-indigency created by the posting of bond is rebuttable and that he or she may still be entitled to court appointed counsel upon sufficient proof of indigent status. *Id.*

Both Appellant and the State assert, and the record in this appeal

supports their assertions that, as in *Smith*, the District Court never inquired on the record about Appellant's ability to hire an attorney or ever advised her that the presumption of non-indigency with regard to appointment of counsel was rebuttable. See *Smith*, 2007 OK CR 6 at ¶ 7, 155 P.3d at 795. The record indicates that Appellant was simply told that because she had posted bond she was required to hire her own attorney. *Id.* Appellant and the State agree that, because the appeal record before this Court cannot support a finding that Appellant was not denied her statutory right to counsel, the revocation of eight years of Appellant's suspended sentence must be reversed and remanded for further proceedings.

### **DECISION**

The order of the District Court of Kay County revoking eight years of Appellant's suspended sentences in Case No. CF-2004-158 in the District Court of Kay County is **REVERSED** and **REMANDED** to the District Court. Pursuant to Rule 3.15, *Rules, supra*, the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF KAY COUNTY  
THE HONORABLE DAVID R. BANDY, ASSOCIATE DISTRICT JUDGE

#### **APPEARANCES IN DISTRICT COURT**

KATHY LYNN LOGAN  
Defendant, *Pro Se*

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**OPINION BY:** HUDSON, J.  
SMITH, P.J.: CONCUR  
LUMPKIN, V.P.J.: CONCUR  
JOHNSON, J.: CONCUR  
LEWIS, J.: CONCUR

RC/F