

JUL 19 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

JEREMY DAVID MANDERS,)
)
 Appellant,)
)
 v.) No. RE-2005-536
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

ORDER GRANTING REVOCATION APPEAL

On May 5, 2000, Appellant entered a plea of guilty before the Honorable Robert Reavis, Associate District Judge, to the offense of Unlawful Possession of Marihuana in Ottawa County District Court Case No. CF-2000-91. Pursuant to a plea agreement, Appellant was sentenced to ten (10) years' imprisonment, with four (4) years to serve and six (6) years suspended.

On December 2, 2003, Appellant entered pleas of guilty before the Honorable Robert G. Haney, District Judge of Ottawa County District Court, to one count in each case, Case Nos. CF-2003-420 and CF-2003-438, for the offenses of Omitting to Provide for Minor Child. Pursuant to a plea agreement, Appellant was sentenced to ten (10) years' imprisonment, with all but the first six (6) months suspended, for each case.

On July 2, 2004, the State filed an Application to Revoke Appellant's suspended sentences, alleging Appellant had committed the new crime of Possession of Pseudoephedrine with Intent to Manufacture, as alleged in Ottawa County District Court Case No. CF-04-259, and that Appellant had not paid his court costs or child support. On September 22, 2004, the State filed an

Amended Application to Revoke suspended sentences, adding the new crimes of Possession of Marijuana, Driving Under Suspension and Obstruction of Official Duty, as alleged in Crawford County, Kansas, District Court Case No. 04CR304G.

On April 29, 2005, a hearing on the State's Application to Revoke was held before Judge Haney. At the conclusion of that hearing, four (4) years of Appellant's suspended sentence in Case No. CF-2000-91 were ordered revoked, to be served consecutively to the sentences imposed in Case Nos. CF-2003-420 and CF-2003-438. In Case No. CF-2003-420, nine (9) years of Appellant's suspended sentence were ordered revoked. In Case No. CF-2003-438, nine and one-half (9 ½) years were ordered revoked. The sentences in Case Nos. CF-2003-420 and CF-2003-438 were ordered to be served concurrently with each other. Appellant is currently incarcerated.

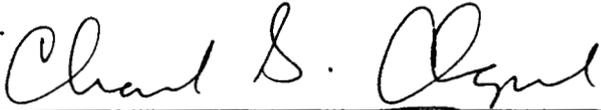
In his only assignment of error, Appellant asserts he only pled guilty to the allegations contained in the State's application to revoke, after being assured by the prosecutor and his counsel that all of the charges would be run concurrently. After a review of the record on appeal, we agree. The record clearly reveals Appellant entered his pleas of guilty, i.e., stipulation to the State's allegations in the application to revoke, based upon the representation and assurances of both the State and his attorney that he would receive sentences totaling nine and one-half years in length. That did not happen. Therefore, Appellant's right to due process and a revocation hearing was violated.¹

¹ Cf. *Manning v. State*, 1962 OK CR 105 , 374 P.2d 796, wherein this Court held that where it reasonably appears a plea of guilty was influenced by persons in apparent authority which has

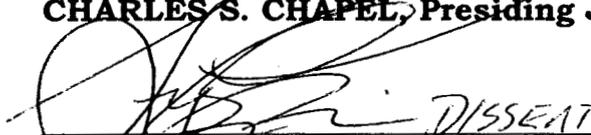
IT IS THEREFORE THE ORDER OF THIS COURT that the order of the Ottawa County District Court revoking Appellant's suspended sentences is **REVERSED**. **IT IS THE FURTHER ORDER OF THIS COURT** that this matter is **REMANDED** to the District Court where Appellant shall be given the choice of being allowed to withdraw his pleas of guilty to the State's application to revoke, or maintaining his pleas of guilty and his revoked sentences shall be modified by the District Court to run concurrently. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE is ORDERED** issued upon the filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day of July, 2006.

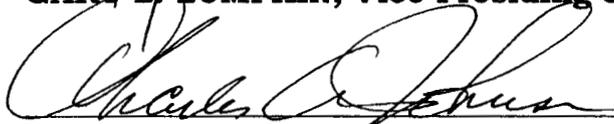


CHARLES S. CHAPEL, Presiding Judge



GARY L. LUMPKIN, Vice Presiding Judge

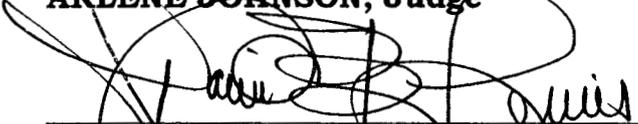
At Most the case should be remanded for 2 item years hearing. Regardless, when the sentences run concurrent consecutive is count by the original JCS not the order itself



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

led a defendant to believe that by entering a plea of guilty, his punishment would be mitigated, he should be permitted to withdraw his plea of guilty and enter a plea of not guilty.

ATTEST:

Michael S. Richie

Clerk

F/RB