

OCT 29 2002

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

**MICHAEL S. RICHIE**  
**CLERK**

BRUCE WAYNE MARTIN, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

No. RE-2001-1375

**SUMMARY OPINION**

**AFFIRMING REVOCATION OF SUSPENDED SENTENCE**

On December 5, 2000, Appellant entered pleas of guilty in Jackson County District Court, to Theft of a Debit Card in Case No. CF-2000-300, Grand Larceny in Case No. CF-2000-295, Count I, Unauthorized Use of a Vehicle in Case No. CF-2000-295, Count II, Obtaining Cash/Merchandise by False Pretenses in Case No. CF-99-183, Uttering a Forged Instrument in Case No. CF-99-182, Count I, Petit Larceny in Case No. CF-99-182, Count II, and Obtaining Cash/Merchandise by False Pretenses in Case No. CF-99-181.

The pleas were accepted and Petitioner was sentenced as follows: In CF-2000-300, three (3) years incarceration, with all but the first year suspended, to run concurrently with CF-2000-295 and CF-99-182; in CF-2000-295, Count I, five (5) years imprisonment, with all but the first year suspended, to run concurrently with CF-2000-300 and CF-99-182; in CF-2000-295, Count II, five (5) years imprisonment, with all but the first year suspended, to run concurrently with CF-2000-300 and CF-99-182; in CF-99-183, one (1) year imprisonment to run consecutive to Count I in CF-99-182 and consecutive to CF-99-181; in CF-99-182, Count I, seven (7) years imprisonment, with all but

the first year suspended, to run concurrently with CF-2000-295 and CF-2000-300; in CF-99-182, Count II, six (6) months imprisonment to run concurrently with Count I; and in CF-99-181, one (1) year imprisonment to run consecutively to Count I in CF-99-182.

On September 25, 2001, the State filed an Application to Revoke the Suspended Sentences, alleging Appellant had violated the rules and conditions of his suspended sentences.<sup>1</sup> Following a hearing on November 9, 2001, the Honorable Richard B. Darby, District Judge, sustained the application and revoked Appellant's sentences. It is from that order that Appellant appeals.

Appellant's first proposition of error contends he was subjected to cruel and unusual punishment in violation of the Eighth Amendment when he received a sentence for Grand Larceny in excess of the statutory maximum. The punishment for Grand Larceny if the property value is less than Five Hundred Dollars (\$500.00) is incarceration in the county jail for not more than one (1) year. See 21 O.S.2001, § 1705. Appellant entered a plea of guilty to Grand Larceny for "taking and carrying away by stealth \$150.00 cash . . ." Accordingly, Appellant asserts his sentence of five (5) years for Grand Larceny in CF-2000-295 is in violation of statute and must be vacated.

The State agrees the trial court erred in sentencing Appellant in excess of the statutory maximum. However, the State contends the error is harmless since the trial court ordered the sentences in Count I and Count II of Case No. CF-2000-295 to run concurrently. After a review of the record, we agree.

---

<sup>1</sup> Specifically, the State alleged Appellant had 1) failed to report to his probation officer as directed, 2) failed to keep his probation officer informed of his current address and

Appellant pled guilty in Count II to Unauthorized Use of a Motor Vehicle. The sentencing range for that crime is one (1) to five (5) years imprisonment. Appellant was sentenced to five (5) years incarceration in Count II. Therefore, while there was error in the sentencing for Count I, there was no prejudice to Appellant because the court still had the authority to revoke four (4) remaining years in Count II.<sup>2</sup> This Court has held that a defendant must show not only error, but also resulting prejudice from that error before reversal is warranted. See *Bland v. State*, 2000 OK CR 11, 4 P.3d 702, 727. We find no prejudice. Therefore, Appellant's conviction for Grand Larceny is **AFFIRMED**, but the sentence in Count I is **MODIFIED** to one (1) year incarceration in the county jail.

In his second proposition of error, Appellant contends he was improperly assessed restitution for crimes with which he was not charged or convicted.<sup>3</sup> The State argues Appellant's arguments regarding restitution have been waived. As the State correctly notes, Appellant has not sought to withdraw his guilty pleas, but rather, is only challenging the restitution imposed. Citing Rules 1.2(D)(5)(a)(iv) and 1.2(D)(a)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2002), the State contends that in order to have appealed the restitution imposed, Appellant must have complied with the rules governing regular misdemeanor and felony appeals. We agree. Further, it was Appellant's

---

employment, and 3) had committed the new offense of Grand Larceny on September 24, 2001.

<sup>2</sup> In addition, Counts I and II in Case No. CF-2000-295 were ordered to run concurrently with CF-99-182 in which Appellant was sentenced to seven (7) years incarceration, with all but the first year suspended.

<sup>3</sup> Appellant contends he was charged with one count, not eight counts, of obtaining cash or merchandise by false pretenses, totaling \$100.00. However, he was ordered to pay restitution

decision to enter into a plea agreement to pay the total amount of restitution for all claims, in exchange for receiving only one felony bogus check conviction.

Finally, pursuant to the revocation order, the balance of Appellant's suspended sentences was revoked. Thus, Appellant will be incarcerated for eight years. In his final assignment of error, Appellant contends such sentences are excessive and should be modified.

It is well settled that a violation of a suspended sentence need only be proven by a preponderance of the evidence. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. Further, a District Court's decision to revoke a suspended sentence is reviewable under the abuse of discretion standard. *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453. In the present case, Appellant does not contend insufficient evidence was presented, but rather argues for sympathy. The sentences are within the statutory ranges of punishment, and we find no abuse of discretion.

**IT IS THEREFORE THE ORDER OF THIS COURT**, the order of the Jackson County District Court revoking Appellant's suspended sentences in Case No. CF-2000-300, Count II of Case No. CF-2000-295, Case No. CF-99-183, CF-99-182 and CF-99-181 is **AFFIRMED**. The sentence for Grand Larceny in Count I of Case No. CF-2000-295 is hereby **REMANDED** to the District Court for resentencing pursuant to the directives of this Opinion.

**IT IS SO ORDERED.**

---

for purportedly writing eight other checks, totaling \$4,889.60.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 29<sup>th</sup> day  
of October, 2002.



**GARY L. LUMPKIN, Presiding Judge**



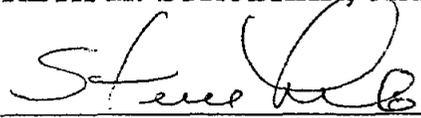
**CHARLES A. JOHNSON, Vice Presiding Judge**



**CHARLES S. CHAPEL, Judge**



**RETA M. STRUBHAR, Judge**



**STEVE LILE, Judge**

ATTEST:



Clerk