

year suspended sentence in full. On appeal Appellant argues that under the facts and circumstances of this case, the total revocation was excessive and seeks modification of his sentence.

Appellant testified that in 1997 he was using drugs and did not care about himself or anybody else. He became drug free in 1999 by leaving Oklahoma and all of his associates for family in Pennsylvania. He kicked his methamphetamine habit, worked full time and was drug free during his stay in Pennsylvania. The record reflects he voluntarily returned to Oklahoma in late 2007 where his daughter and grandchildren live, found employment and arranged to surrender. He states that he now has family support in Oklahoma, has stayed drug free, has not been arrested since 1997, has made all of his court appearances and made an agreement to pay court costs and that he has abided by that agreement. Appellant's testimony is supported by witnesses called on his behalf and supporting documentation admitted into evidence.

In *Middaugh v. State*, 1988 OK CR 295, ¶20, 767 P.2d 432, we held upon review we must look at the facts and circumstances of each case to determine whether a sentence is excessive. We will not modify a sentence unless the facts and circumstances show that the sentence is so excessive that it shocks the conscience of this Court. See *Rea v. State*, 2001 OK CR 28, 34 P.3d 148. Considering the facts and circumstances of this case we find the revocation of five years excessive and modify the sentence to time served.

DECISION

The revocation of Appellant's suspended sentence in Pottawatomie County District Court Case No. CF-1997-179 is **AFFIRMED** but Appellant's five year sentence is **MODIFIED TO TIME SERVED**.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

REVOCATION APPEAL FROM THE DISTRICT COURT OF POTTAWATOMIE COUNTY, THE HONORABLE DOUGLAS L. COMBS, DISTRICT JUDGE

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OPINION BY: LEWIS, J.

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LUMPKIN, J.: Concur in Results
CHAPEL, J.: Concur in Results