

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 28 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROBERT LERONE MIMS,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

No. RE-2000-920

ACCELERATED DOCKET ORDER

The Appellant, Robert Lerone Mims, has appealed to this Court from the partial revocation of his suspended sentence in Case No. CF-96-102 in the District Court of Muskogee County, before the Honorable James E. Edmondson, District Judge. In that case, Appellant pled guilty and was convicted of Attempted Robbery By Force and Fear. He was sentenced to a term of ten (10) years, with the sentence suspended pursuant to rules and conditions of probation.

On November 16, 1998, the State filed an application to revoke suspended sentence alleging Appellant had violated probation by taking a ring valued at \$100 from a pawn shop without paying for the ring. On March 18, 1999, Appellant stipulated and pled guilty to the alleged violation, and Judge Edmondson revoked one (1) year of Appellant's suspended sentence, with the balance to remain suspended. Judge Edmondson ordered Appellant to complete 12 month Drug Offender Work Camp at Bill Johnson Correctional Center, and set the case for review on April 17, 2000. Appellant was discharged to probation from his "one (1) year" term of incarceration on June 11, 1999.

On June 2, 2000, a hearing "for review of [Appellant's] probation" was held before Judge Edmondson. No application to revoke suspended sentence was filed prior to the hearing. At the conclusion of the hearing, Judge Edmondson

ordered another three (3) years of Appellant's suspended sentence to be revoked, with the balance remaining suspended. Appellant appeals from Judge Edmondson's order.

Appellant asserts two (2) propositions of error in this appeal. In the first proposition, Appellant claims he was denied his statutory and constitutional right to due process when the State failed to file an application to revoke his suspended sentence. The second proposition claims the District Court's revocation of Appellant's suspended sentence was excessive under the facts of this case and should be reversed or modified.

Pursuant to Rule 11.2(A)(2) of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001), this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions or issues were presented to this Court in oral argument on March 22, 2001, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted three to zero (3-0) to reverse the revocation of three (3) years of Appellant's suspended sentence, and to remand to the District Court for further proceedings. This Court found that proceedings in the District Court did not comply with applicable statutes.

Statute mandates that a suspended sentence "may not be revoked, in whole or in part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court." 22 O.S.Supp.2000, § 991b(A). No petition or application to revoke was filed before the District Court issued the order revoking three (3) years of Appellant's suspended sentence. The only application to revoke contained in the record in this appeal was filed prior to the hearing on March 18, 1999, during which one (1) year of Appellant's suspended sentence was revoked. The record indicates Appellant served and was discharged from that term of incarceration.

We do not find from the record in this case that Appellant waived the statutory requirement that a petition be filed, before the District Court partially revoked his suspended sentence, by ordering him to serve three (3) years imprisonment.

Id.

The District Court order of March 18, 1999, revoking one (1) of Appellant's suspended sentence, states "[t]his case set for Review April 17, 2000." The order does not state the authority under which it sets the case for review. The State has cited no authority which authorizes a sentencing court to continually review a suspended sentence and to revoke a suspended sentence in whole or in part whenever it deems such action necessary.

IT IS THEREFORE THE ORDER OF THIS COURT that the revocation of three (3) years of Appellant's suspended sentence in Case No. CF-96-102 in the District Court of Muskogee County should be, and is hereby, **REVERSED** and **REMANDED** to the District Court for further proceedings consistent with this order.

IT IS SO ORDERED.

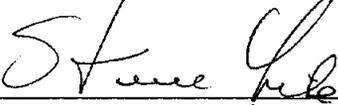
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this ¹⁸~~30~~ day of March, 2001.



GARY L. LUMPKIN, Presiding Judge



CHARLES S. CHAPEL, Judge



STEVE LILE, Judge

ATTEST:



Clerk