

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

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

JUN 14 2013

**SAMUEL DAVID MIRICH,**

**Appellant,**

**v.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

**MICHAEL S. RICHIE  
CLERK**

**No. RE 2012-0259**

**SUMMARY OPINION**

**LEWIS, PRESIDING JUDGE:**

Appellant, Samuel David Murich, pled guilty December 17, 2004, in Garfield County District Court Case Nos. CF-2003-681 and CF-2003-805 to Possession of a Controlled Dangerous Substance. Appellant was sentenced on July 8, 2005, to five years suspended in each case with rules and conditions of probation. The sentences were ordered to run concurrently. Both of these sentences were also ordered to run consecutively to the sentence imposed in Cleveland County Case No. CF-2006-1185.

The State filed an application to revoke Appellant's suspended sentences on June 7, 2006, alleging Appellant committed the offense of Domestic Abuse as alleged in CM-2006-62 and that Appellant had tested positive for amphetamines. The application was amended July 18, 2007, to include the allegation that Appellant was convicted of the offense of Accessory to Murder in the First Degree in Cleveland County Case No. CF-2006-1185. The second amended application

was filed March 27, 2008, alleging Appellant committed three additional criminal offenses.

Following a revocation hearing on March 15, 2012, Appellant's suspended sentences were revoked in full. The Honorable Paul K. Woodward, District Judge, revoked Appellant's suspended sentences finding Appellant committed the new offense of Accessory to Murder in the First Degree<sup>1</sup>. Appellant appeals from the revocation of his suspended sentences.

On appeal Appellant raises two propositions of error: (1) The State failed to prove the allegation that Appellant violated the probation rule against committing other offenses because it failed to prove the finality of the conviction it offered as proof; and, (2) The orders revoking Appellant's suspended sentences should be vacated because the State's unexplained and unreasonable delay deprived Appellant of his due process rights to his prejudice under the 14<sup>th</sup> Amendment to the United States Constitution and art. II, § 7, of the Oklahoma Constitution.

In the State's Answer Brief filed in this Court January 7, 2013, the State concedes the use of the Judgment and Sentence of a new offense as the sole basis for Appellant's revocation, without presenting proof of the finality of the new conviction, entitles Appellant to relief. We agree. When the State introduces a certified or authenticated copy of the judgment and sentence of the referenced conviction as a basis for revocation of a suspended sentence, it must also offer strict proof of the finality of that referenced judgment and

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<sup>1</sup> Following a hearing on Appellant's motion to dismiss for lack of a speedy trial held on January 13, 2012, Judge Woodward struck from the State's second amended application all violations except for the third listed violation, a conviction for Accessory to Murder in the First Degree.

sentence. *Pickens v. State*, 1989 OK CR 58, ¶ 12, 779 P.2d 596. In this case the State failed to offer any proof of finality of the Judgment and Sentence in Cleveland County Case No. CF-2006-1185. As we find Appellant is entitled to relief on his first proposition of error, the second proposition of error is moot.

### **DECISION**

The revocation of Appellant's suspended sentences in Garfield County District Court Case Nos. CF-2003-681 and CF-2003-805 is **REVERSED** and the matter is **REMANDED** to the District Court for further proceedings consistent with this Order. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

### **REVOCATION APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY, THE HONORABLE PAUL K. WOODWARD, DISTRICT JUDGE**

#### **APPEARANCES AT TRIAL**

ROBERT FAULK  
118 EAST RANDOLPH  
ENID, OKLAHOMA 73701  
COUNSEL FOR APPELLANT

IRENE ASAI  
DISTRICT ATTORNEY'S OFFICE  
GARFIELD COUNTY COURTHOUSE  
ENID, OKLAHOMA 73701  
COUNSEL FOR THE STATE

#### **APPEARANCES ON APPEAL**

CINDY BROWN DANNER  
CHIEF, GENERAL APPEALS DIVISION  
P. O. BOX 926  
NORMAN, OKLAHOMA 73070  
COUNSEL FOR APPELLANT

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA  
JUDY KING  
ASSISTANT ATTORNEY GENERAL  
313 N.W. 21<sup>st</sup> STREET  
OKLAHOMA CITY, OKLAHOMA 73105  
COUNSEL FOR THE STATE

**OPINION BY: LEWIS, P.J.**

SMITH, V.P.J.: Concur  
LUMPKIN, J.: Concur  
C.JOHNSON, J.: Concur  
A.JOHNSON, J.: Concur

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