



Guardian Interlock Program. Judge Gray revoked two years of the five year suspended sentence on Count 1, with the remainder of the sentence to be suspended. Appellant appeals from the revocation of his suspended sentence.

On appeal Appellant raised the following propositions of error:

1. The State presented insufficient evidence to establish by a preponderance of the evidence that Mr. Monarch had the financial means, or failed to make sufficient bona fide efforts to obtain the funds, to pay probation fees and participate in the Guardian Interlock Program but willfully refused.
2. The trial court was without jurisdiction to impose additional punishment in the form of forty (40) more hours of community service because it was not imposed as an alternative form of punishment due to Mr. Monarch's lacking the financial means to pay probation fees or to participate in the Guardian Interlock Program.

The record before this Court includes Appellant's admission that he violated the rules and conditions of probation when he drove on more than one occasion without the Guardian Interlock device installed on the car that he was driving. A violation of a suspended sentence need only be proven by a preponderance of the evidence. *See Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. Therefore, we find no abuse of discretion in the District Court's revocation of Appellant's suspended sentence. However, we do agree with Appellant's argument that "the additional forty (40) hours of community service was not 'a penalty previously imposed in the judgment and sentence' and thus the trial court was without jurisdiction to impose it." *See Marutzky v. State*, 1973 OK CR 398, ¶ 5, 514 P.2d 430, 432.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the revocation of Appellant's suspended sentence in the District Court of Oklahoma County, Case

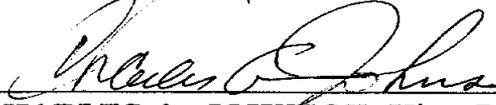
No. CF-99-4400, is **AFFIRMED**, however, the additional forty hours of community service imposed April 23, 2001, is **VACATED**.

**IT IS SO ORDERED.**

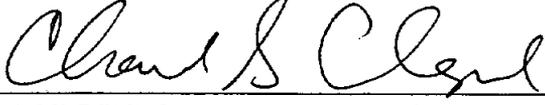
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 13<sup>th</sup> day of March, 2002.



**GARY L. LUMPKIN, Presiding Judge**



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



**CHARLES S. CHAPEL, Judge**



**RETAM M. STRUBHAR, Judge**



**STEVE LILE, Judge**

ATTEST:



Clerk