

APR 28 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE  
CLERK

DAVID ROBERT MONTGOMERY, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

No. RE 2003-0857

**SUMMARY OPINION**

Appellant pled guilty December 3, 1998, in the District Court of McCurtain County, Case No. CRF-98-245A, to Burglary, Second Degree. Sentencing was deferred for four years, with rules and conditions of probation. On June 26, 2000, upon the State's motion to accelerate, Judgment and Sentence was imposed, and Appellant was sentenced to five years with all except the first six months suspended.

On September 25, 2001, upon the State's motion to revoke, the District Court revoked six months of the five year suspended sentence. Then, following a hearing August 26, 2002, upon the State's motion to revoke, the District Court revoked one year of the five year suspended sentence.

Upon the State's third application to revoke, following a hearing July 11, 2003, the Honorable Gary L. Brock, Special Judge, revoked three and one-half years of the five year suspended sentence. Judge Brock found Appellant failed to maintain employment, failed to pay restitution, failed to pay court costs, failed to complete community service, and committed the new crimes of Driving Under

Suspension and Driving Without A Seat Belt. Judge Brock concluded: "Multiple probation violations (both accelerations and revocations) have been filed on this Defendant, yet he continues to blatantly violate the rules of his suspended sentence." Appellant appeals from the revocation of his suspended sentence.

On appeal Appellant raised the following propositions of error:

1. The trial judge was without authority to revoke three and one-half years of Appellant's sentence.
2. The revocation was excessive in this case.

As for Appellant's first proposition of error, the State answers:

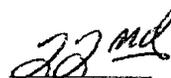
It appears from the record that the judge did not intend to extend the defendant's sentence but made a computational error in calculating the time remaining. Therefore, the defendant's revoked sentence should be modified to reflect a revocation of the remainder of his suspended sentence or three years.

And, finding the revocation in full of Appellant's suspended sentence is not so excessive as to shock the conscience of the Court, we decline to modify Appellant's sentence. *Middaugh v. State*, 1988 OK CR 295, ¶¶20-21, 767 P.2d 432.

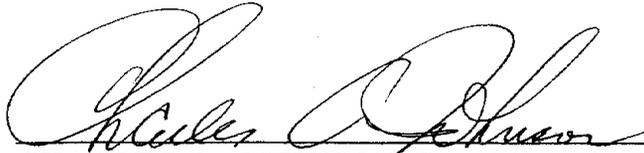
**IT IS THEREFORE THE ORDER OF THIS COURT**, that the revocation of Appellant's suspended sentence in the District Court of McCurtain County, Case No. CRF-1998-245A, is **AFFIRMED**, but the revocation of three and one-half years is **MODIFIED** to three years.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this



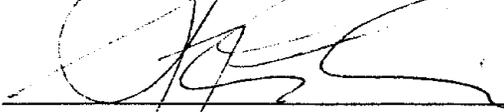
day of April, 2004.



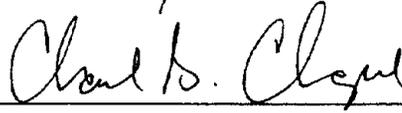
**CHARLES A. JOHNSON, Presiding Judge**



**STEVE LILE, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**

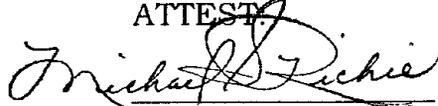


**CHARLES S. CHAPEL, Judge**



**REFA M. STRUBHAR, Judge**

ATTEST



Clerk