

SEP 29 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

FLOYD ANDREW MORRIS,)
)
 Appellant,)
)
 -vs-)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-2003-1203

SUMMARY ORDER AFFIRMING REVOCATION OF
SUSPENDED SENTENCE, AND REMANDING FOR
CORRECTION OF LENGTH OF SENTENCE

The Appellant, Floyd Andrew Morris, has appealed to this Court from the revocation of his suspended sentence in Case No. CF-2000-308 in the District Court of Payne County, before the Honorable Donald L. Worthington, District Judge. In that case, Appellant entered a plea of guilty and was convicted of Count 1 – Cultivation of Marijuana; and Count 2 – Possession of Marijuana. Appellant was sentenced to terms of ten (10) years on Count 1, and one (1) year on Count 2, with the sentences suspended and ordered to be served concurrently with each other and with Appellant’s sentences in Payne County District Court Case Nos. CF-1999-423 and CM-2000-137.

On April 2, 2001, the State filed a first application to revoke Appellant’s suspended sentences alleging Appellant violated probation by failing to report to or contact the Payne County Drug Court Program as ordered. On July 13, 2001, Appellant confessed the application to revoke. On August 10, 2001, Judge Worthington revoked thirty (30) days of Appellant’s suspended sentence, with

credit for time served.

On August 6, 2002, the State filed the current application to revoke Appellant's suspended sentences alleging Appellant violated probation by failing to comply with requirements and being discharged from the Payne County Drug Court Program, and by testing positive on drug screenings. On February 28, 2003, the hearing on the current application to revoke was held before Judge Worthington. At the conclusion of the evidence, Judge Worthington sustained the State's motion to revoke, and delayed sentencing until August 22, 2003. As a condition of the delay in sentencing, Judge Worthington ordered Appellant into the Drug Court program in Tulsa County.

On August 22, 2003, Appellant failed to appear for the sentencing hearing. On October 24, 2003, the sentencing hearing was held before Judge Worthington. Appellant indicated the reason he had not appeared on August 22, 2003, was because he had gone to California. Appellant also indicated he had failed to bring a supervisory report from the Tulsa County Drug Court program. Judge Worthington revoked Appellant's ten (10) year suspended sentence. The written order states that the "suspended sentence is revoked and that the [Appellant] be imprisoned in a penitentiary for a term of 10 YEARS."

In this appeal, Appellant asserts two (2) propositions of error. Appellant first contends the written order revoking was in error because it failed to comport to the court's previous orders; Mr. Morris had less than the ten years revoked remaining on his suspended sentence. The second proposition claims the revocation of Mr. Morris' entire suspended sentence was excessive considering

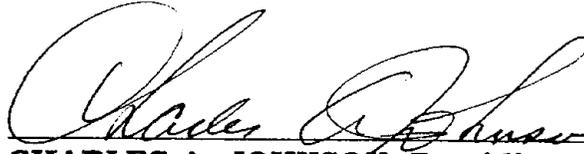
the evidence surrounding the violation of probation.

As the State confesses, this matter should be remanded to the District Court with instructions to correct the *Judgment and Sentence After Revocation Proceedings* to reflect Appellant should be imprisoned in a penitentiary for a term of TEN YEARS, less the thirty (30) days previously revoked on his suspended sentence. On August 10, 2001, the District Court revoked thirty (30) days of Appellant's suspended sentence, and gave him credit for time served against that thirty (30) day term. Any other time in excess of thirty (30) days that Appellant spent in the County Jail awaiting revocation proceedings was not part of the previous revocation, and was not part of the service of his sentence. See *Shepard v. State*, 1988 OK CR 97, ¶21, 756 P.2d 597, 602. Appellant has not established that revocation of the balance of his ten (10) year suspended sentence was an abuse of discretion, or shocks the conscience. *Harris v. State*, 1989 OK CR 10, ¶3, 772 P.2d 1329, 1331.

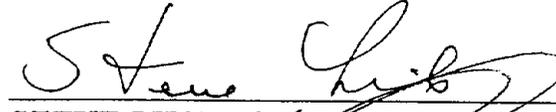
IT IS THEREFORE THE ORDER OF THIS COURT that the revocation of Appellant's suspended sentence in Case No. CF-2000-308 in the District Court of Payne County should be, and is hereby, **AFFIRMED**, and the matter is **REMANDED** to the District Court with instructions to correct the *Judgment and Sentence After Revocation Proceedings* to reflect Appellant should be imprisoned in a penitentiary for a term of TEN YEARS, less the thirty (30) days previously revoked on his suspended sentence.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 29th day
of September, 2004.



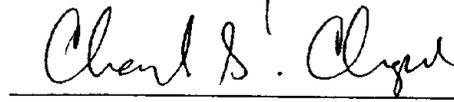
CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge

NOT PARTICIPATING

RETA M. STRUBHAR, Judge

ATTEST:



Clerk