

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

**ERIC LAMONT MUHAMMAD,**

**Appellant,**

**v.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

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**NOT FOR PUBLICATION**

**No. RE-2015-104**

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

**MAR 17 2016**

**MICHAEL S. RICHIE  
CLERK**

**SUMMARY OPINION**

**LUMPKIN, VICE PRESIDING JUDGE:**

The Appellant, Eric Lamont Muhammad, appeals from an order entered by the Honorable Cindy H. Truong, District Judge, revoking Appellant's six year suspended sentence in Case No. CF-2008-7778 in the District Court of Oklahoma County. On November 19, 2009, Appellant entered a plea of guilty and was convicted of Shooting With Intent to Kill. He was sentenced to a term of ten years, with all except the first four years suspended.

On December 29, 2014, the State filed an application to revoke Appellant's suspended sentence alleging he violated probation (1) by failing to pay supervision fees; (2) by committing, on or about 9/16/14, the new crime of Possession of a CDS as charged in Oklahoma County District Court Case No. CM-2014-3178; and (3) by committing, on or about 6/2/14, the new crime of Domestic Abuse By Strangulation as charged in Oklahoma County District Court Case No. CF-2014-3660. On January 5, 2015, Appellant entered a plea of not guilty to the application to revoke. The revocation hearing was

conducted before Judge Truong on Monday, January 26, 2015. After hearing the evidence and arguments, Judge Truong found that Appellant had committed the new crime of Possession of a CDS, and revoked Appellant's six year suspended sentence in full.

We will only discuss Appellant's first proposition of error in this appeal because the State has confessed error on that proposition. The hearing on an application to revoke a suspended sentence must be held within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the state and the defendant. 22 O.S.2011, § 991b(A). In this case, Appellant entered a plea of not guilty to the application to revoke his suspended sentence on January 5, 2015. Appellant argues, and the State agrees that the twenty day period for holding the hearing expired on Sunday, January 25, 2015; and therefore the hearing on Monday, January 26, 2015, was held after the twenty day time period had expired. Both parties agree that there is no record in this case that Appellant waived the twenty day hearing requirement or acquiesced in a continuance of the hearing.

### **DECISION**

The order of the District Court of Oklahoma County granting the State's application to revoke Appellant's six year suspended sentence in Case No. CF-2008-7778 is **REVERSED** and **REMANDED** to the District Court. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE CINDY H. TRUONG, DISTRICT JUDGE

**APPEARANCES IN DISTRICT COURT**

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**OPINION BY:** LUMPKIN, V.P.J.  
SMITH, P.J.: Dissent  
JOHNSON, J.: Concur  
LEWIS, J.: Concur  
HUDSON, J.: Concur

RD/F

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**SMITH, P.J., DISSENTING:**

In this case the 20<sup>th</sup> day was a Sunday. The hearing was held on Monday. I would find that the hearing was timely pursuant to OCCA Rule 1.5; 12 O.S. 2006; and *Reynolds v. State*, 1987 OK CR 56, 735 P.2d 564.