



Having thoroughly considering Appellant's propositions of error and the entire record before the Court, including the original record, transcripts, and briefs of the parties, the Court **FINDS** reversal is required as concerns the revocation order in Case No. CF-2003-167 but that the revocation order entered in Case No. CF-2003-164 requires neither reversal nor modification.

In Proposition I, Appellant notes the State's failure to file any petition seeking revocation of Appellant's suspended sentence in CF-2003-167. The district attorney's filing of a petition setting forth the grounds for revocation has been made a prerequisite for the revocation of any suspended sentence by 22 O.S.Supp.2005, § 991b.<sup>1</sup> Because no such petition was filed in CF-2003-167, Appellant concludes that the District Court was without jurisdiction to revoke its suspension order in that particular case. The State's Answer Brief acknowledges this error and correctly observes that reversal is required.<sup>2</sup>

In Proposition II, Appellant claims an abuse of discretion in the District Court having revoked the suspension order in CF-2003-164 in its entirety. We have reviewed those circumstances identified by Appellant that he argues mitigate against revocation in full; however, we find such circumstances to be insufficient to demonstrate an abuse of discretion due to one of the proven

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<sup>1</sup> Section 991b, in relevant part, states, "Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of the person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court . . . ." 22 O.S.Supp.2005, § 991b(A).

<sup>2</sup> See *Walker v. State*, 1989 OK CR 65, ¶ 7, 780 P.2d 1181, 1183 (where in three separate cases the trial court revoked defendant's suspended sentences, but in one case the State never filed an application to revoke, the Court on appeal concluded that the trial court was without jurisdiction to revoke in that one case and that reversal and remand of that particular case was in order). In Appellant's matter, we note that the record is devoid of any formal journal entry of revocation in CF-2003-167. Nevertheless, because Judge Gibson announced revocation of Appellant's suspended sentence at the conclusion of the revocation hearing and because a court minute was entered in CF-2003-164 stating that revocation was had in CF-2003-167, the Court finds Appellant entitled to relief on this matter.

grounds for revocation being Appellant's commission in the State of Kansas of a subsequent felony offense.<sup>3</sup>

### DECISION

The September 3, 2008, final order of the District Court of Nowata County, that revoked in full the order partially suspending execution of that sentence imposed in Case No. CF-2003-164 against WILLIAM JOHN MYERS, Appellant, is **AFFIRMED**; however, the order pronounced in CF-2003-167 revoking the suspension order in that case is hereby **REVERSED AND REMANDED WITH INSTRUCTIONS** that the District Court on remand enter such orders as necessary to clarify that that the suspension order in CF-207-167 remains in full force and effect. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2009), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF NOWATA COUNTY  
BEFORE THE HONORABLE CARL G. GIBSON, ASSOCIATE DISTRICT JUDGE

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<sup>3</sup> "[T]he decision to revoke the suspended sentence in whole or in part lies within the discretion of the trial court and absent an abuse thereof the trial court's decision will not be disturbed." *Mack v. State*, 1981 OK CR 160, ¶ 3, 637 P.2d 1262, 1264. This being so, "[w]here the evidence tends in any degree to support the action of the trial court in revoking a suspended sentence, the trial court's ruling should not be disturbed." *Gibson v. State*, 1975 OK CR 40, ¶ 3, 532 P.2d 853, 854.

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**OPINION BY: LEWIS, J.**  
**C. Johnson, P.J.: Concur**  
**A. Johnson, V.P.J.: Concur**  
**Lumpkin, J.: Concur**  
**Chapel, J.: Concur**