



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STUART PALMER,)
Appellant,)
v.)
STATE OF OKLAHOMA,)
Appellee.)

NOT FOR PUBLICATION

No. RE-2015-922

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY - 4 2017
MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

On March 29, 2013, Appellant Palmer's deferred sentence in Ottawa County Case No. CM-2010-334 was accelerated. He was sentenced to twelve (12) months, all suspended, subject to terms and conditions of probation. On April 24, 2015, Palmer, represented by counsel, entered a plea of nolo contendere to a perjury charge as alleged in Ottawa County Case No. CF-2014-93. Palmer was sentenced to five (5) years, suspended, subject to terms and conditions of probation. This sentence was ordered to be served concurrently with his suspended sentence in Case No. CM-2010-334.

On August 26, 2015, the State filed an application to revoke Palmer's suspended sentences alleging he failed to report as ordered, failed to pay court costs and failed to complete a batterer's program as ordered. The State subsequently filed two amended revocation applications, alleging, in addition to the original violations, that Palmer committed the new offenses of Kidnapping, Assault and Battery with Intent to kill, and Domestic Abuse Assault and Battery, all after

former conviction of a felony, as alleged in Ottawa County Case No. CF-2015-301. He was also charged with Animal Cruelty as alleged in Ottawa County Case No. CF-2015-306. On October 9, 2015, at the conclusion of the revocation hearing, the District Court of Ottawa County, the Honorable Robert Haney, District Judge, revoked Palmer's suspended sentences in full.

From this judgment and sentence, Palmer appeals raising the following issues:

1. The court denied Appellant his due process rights and right to confrontation when it proceeded in the revocation hearing without Appellant being present;
2. The court denied Appellant his due process rights when it forced appointed counsel to represent Appellant and denied Appellant the right to represent himself;
3. Appellant was denied due process when the trial court failed to state its reasons for the revocation; and
4. The trial court lacked authority to impose post-imprisonment supervision at the time of the revocation of Appellant's suspended sentence.

The revocation of Palmer's suspended sentence is **AFFIRMED**.

In his first proposition, Palmer alleges that the trial court violated his due process rights when it removed him from the courtroom, denying him the right of confrontation. While conceding that a revocation proceeding is not a trial, and that rights at such a proceeding are limited, Palmer claims that he had a right to be

present at the revocation hearing. See, *Wortham v. State*, 2008 OK CR 18, ¶ 13, 188 P.3d 201, 205; *Gilbert v. State*, 1988 OK CR 283, ¶ 9, 765 P.2d 807, 809.¹

Pursuant to 22 O.S.Supp.2012, § 991b(D) a person whose suspended sentence is being considered for revocation is entitled to a hearing, at which he shall have the right to be represented by counsel, to present competent evidence in his behalf and to be confronted by the witnesses against him. The Supreme Court held in *Illinois v. Allen*, 397 U.S.337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), that a criminal defendant can, by his disruptive actions, waive his right to be physically present during his trial. *Id.* at 343, 90 S.Ct. at 1060-61. The Court found that if, after being warned by the judge that he would be removed if he continues his disruptive behavior, a defendant nevertheless insists on conducting himself in a manner so disorderly, disruptive and disrespectful of the court that his trial cannot be carried on with him in the courtroom, he could be removed from the proceedings. *Id.*; *Watson v. State*, 2010 OK CR 9 ¶ 6, 234 P.3d 111, 113 (a defendant's right to be present at a hearing can be waived by his voluntary absence or disruptive conduct); *Gregg v. State*, 1992 OK CR 82, ¶ 24, 844 P.2d 867, 876-877, citing *Peters v. State*, 1973 OK CR 443, ¶ 13, 5116 P.2d 1372, 1374-1375. This Court reviews the trial court's decision to proceed with a trial *in*

¹As this Court noted in *Hampton v. State*, 2009 OK CR 4, ¶ 14, 203 P.3d 179, 183, the probationers right of confrontation is a right that arises from due process considerations, and is not the same as that granted defendants under the Sixth Amendment of the U.S. Constitution in criminal prosecutions. In examining a revocation proceeding the standard to be applied is whether or not the proceeding was fundamentally fair. *Id.*, 2009 OK CR 4, ¶ 21, 203 P.3d at 187.

absentia for an abuse of discretion. *Delancy v. State*, 1979 FOK CR 56, ¶ 6. 596 P.2d 897, 899.

The record in this case reveals that when Palmer appeared for the revocation hearing, he immediately began interrupting and speaking out while the court was speaking. Judge Haney repeatedly warned Palmer to stop talking directly to the court; to stop interrupting the court; and to address his concerns to counsel who was there representing him. Counsel made a record of Palmer's objection to the court's refusal to continue the hearing because of an inability to contact a witness on Palmer's behalf, and still Palmer insisted on speaking over the court and did not address his concerns to counsel. Palmer repeatedly interrupted the court proceedings; he was admonished by the court to speak only through counsel; he was warned by Judge Haney that failure to comply with the court's directive would result in his removal from the courtroom; and was given numerous chances to comply with the court's instructions. Instead, Palmer chose to disobey the court's directive and was removed from the revocation proceedings. We find no abuse of discretion here warranting relief. Moreover, Palmer presents no evidence sufficient to show that his revocation proceeding was fundamentally unfair, in spite of his absence.

Palmer next claims that he was denied the right to represent himself at the revocation proceeding, again claiming a violation of due process. We find nothing in this appeal record indicating that Palmer made a voluntary, knowing and intelligent demand to proceed *pro se*. *Hughes v. State*, 1988 OK CR 214, ¶ 9, 762

P.2d 977, 980 (citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). Palmer made no valid request for self-representation and submitted no written waiver of counsel, therefore there could be no denial of the right to proceed *pro se*. In fact, the only evidence on the record indicates that Palmer received court-appointed counsel at his written request. We find no merit in Palmer's claim that he was denied the right to represent himself at his revocation proceeding.

At Proposition III, Palmer argues that he was denied due process when the trial court failed to state its reasons for revoking his suspended sentence. There is no statutory requirement that a court issue findings of fact and conclusions of law upon revoking a suspended sentence. See 22 O.S.Supp.2012, § 991b(D). The court's comments from the bench, the evidence presented at the revocation hearing and the written revocation orders sufficiently apprised Palmer of the basis for the revocation of his suspended sentences. See, *Powell v. State*, 1987 OK CR 238, ¶¶ 3-4, 745 P.2d 1180, 1182; *Mack v. State*, 1981 OK CR 160, ¶¶ 4-5, 637 P.2d 1262, 1264. The State, on the record, abandoned the allegations that Palmer failed to appear and failed to complete the batterer's program, leaving only the failure to pay court costs, and the new Ottawa County charges as the basis for revoking Palmer's suspended sentences. Violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 406 P.3d 554, 557; *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d. 744, 745. There was more than sufficient evidence presented of Palmer's numerous probation

violations to support the revocation of his suspended sentences. We find no error here requiring relief.

Palmer's final allegation of error is that the trial court, upon revoking his suspended sentences, lacked authority to impose post-imprisonment supervision as it was not a condition of the original judgment and sentence imposed at the time of his convictions. The State's answer brief alleges that Palmer's claim is moot. In an order entered and filed April 12, 2016, Judge Haney issued an order *nunc pro tunc* correcting the Order Revoking Suspended Sentence in Palmer's case, removing the language imposing post-imprisonment supervision. A file-stamped copy of the order was filed with the State's brief. As Palmer's claim has been addressed and resolved by the District Court, we find this issue to be **MOOT**.

DECISION

The order of the District Court of Ottawa County revoking Appellant's suspended sentences in Case Nos. CM-2010-334 and CF-2014-93 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY
THE HONORABLE ROBERT HANEY, DISTRICT JUDGE

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OPINION BY: LUMPKIN, P.J.:

LEWIS, V. P.J.: Concur
JOHNSON, J.: Not Participating
SMITH, J.: Concur
HUDSON, J.: Concur

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