

JUL 1 2 2005

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

**MICHAEL S. RICHIE**  
**CLERK**

|                        |   |                 |
|------------------------|---|-----------------|
| DEWAYNE EUGENE RING,   | ) |                 |
|                        | ) |                 |
| Appellant,             | ) |                 |
| vs.                    | ) | No. RE-2004-445 |
|                        | ) |                 |
| THE STATE OF OKLAHOMA, | ) |                 |
|                        | ) |                 |
| Appellee.              | ) |                 |

**SUMMARY ORDER REMANDING MATTER TO**  
**THE DISTRICT COURT OF POTTAWATOMIE COUNTY**

The Appellant, Dewayne Eugene Ring, has appealed to this Court from the revocation of the balance of his suspended sentence, seven (7)years and nine (9) months, in Case No. CF-2003-335 in the District Court of Pottawatomie County, before the Honorable Douglas L. Combs, District Judge. In that case, Appellant entered a plea of guilty to Attempted Burglary in the Second Degree, and was sentenced to a term of eight (8)years, with all suspended except the first ninety (90)days.

On March 15, 2004, the State filed a motion to revoke Appellant's suspended sentence alleging he had violated probation by failing to submit to a random drug screen; and by failing to report as ordered. On April 21, 2004, the revocation hearing was held before Judge Combs. At the conclusion of the evidence, Judge Combs found that Appellant had violated probation as alleged

and revoked the balance of Appellant's suspended sentence, seven (7) years and nine (9) months. Appellant brings this appeal.

In this appeal, Appellant asserts two (2) propositions of error. He first contends the District Court's revocation of Appellant's entire suspended sentence was excessive under the facts of this case and should be modified. The second proposition contends that, because Appellant had two prior convictions that were known to the court, and there was no proper waiver of the prohibition against granting Appellant a suspended sentence, he should be allowed an opportunity to withdraw his guilty plea.

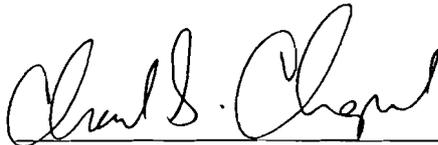
We only address Appellant's second proposition because the State concedes that proposition has merit. Appellant argues, and the State agrees, that his suspended sentence is void pursuant to *Bumpus v. State*, 1996 OK CR 52, 925 P.2d 1208. The parties agree the record in this case was clear that Appellant was being sentenced upon his third or subsequent to his third conviction of a felony, and that he was not entitled to have any portion of his sentence suspended. *Bumpus*, 1996 OK CR 52 at ¶¶4-10, 925 P.2d at 1209-10. Because Appellant's plea was based upon the promise of a suspended sentence, we find Appellant should be returned to Pottawatomie County and given the opportunity to withdraw his guilty plea and proceed to trial in Case No. CF-2003-335. *Bumpus v. State*, 1996 OK CR 52 at ¶11, 925 P.2d at 1211. If Appellant does not wish to withdraw his plea, the District Court shall vacate the suspended portion of Appellant's sentence and order him to serve the balance of

the sentence in prison. *Bumpus v. State*, 1996 OK CR 52 at ¶12, 925 P.2d at 1211.<sup>1</sup>

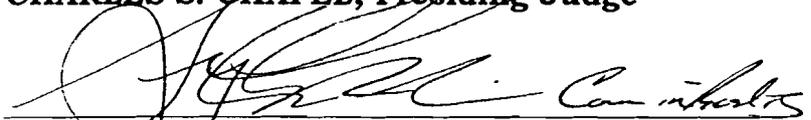
**IT IS THEREFORE THE ORDER OF THIS COURT**, that Appellant's Judgment and Sentence in Case No. CF-2003-445 is **VACATED** and this matter is hereby **REMANDED** to the District Court of Pottawatomie County for further proceedings consistent with this Order.

**IT IS SO ORDERED.**

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this <sup>the</sup> 12 day of July, 2005.



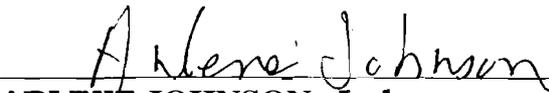
**CHARLES S. CHAPEL, Presiding Judge**



**GARY L. LUMPKIN, Vice Presiding Judge**



**CHARLES A. JOHNSON, Judge**



**ARLENE JOHNSON, Judge**

ATTEST:



Clerk

<sup>1</sup> The unpublished decision of this Court in *Phelps v. State*, No. RE-2001-947 (Okl. Cr. October 2, 2002) should not be relied upon as a proper remedy in these types of cases.