



On appeal, Appellant raised two (2) propositions of error:

1. The Order revoking Mr. Romo's suspended sentences should be vacated because the State failed to prosecute its Motion to Revoke in a timely manner; specifically, the State waited one year between the date Mr. Romo's Motion for New Trial was filed and the date he was brought to appear on the application, and the one and one-half years between the time the application was filed and the date of Mr. Romo's appearance, and
2. Because the prosecutor seemed to announce that his policy was to reduce a defendant's sentence by six months for stipulating to the allegations, and because Mr. Romo did stipulate to the allegations, this Court should modify the sentence by six months, or in the alternative, allow Mr. Romo to withdraw his stipulation to the allegations.

After thoroughly considering the proposition raised and argument presented to this Court, we find, by a vote of 3 to 0, that the revocation of Appellant's suspended sentences should be REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.

The decision of a trial court to revoke a suspended sentence in whole or in part lies within the discretion of the trial court and that decision will not be disturbed absent an abuse of discretion. *See Harris v. State*, 1989 OK CR 10, ¶3, 772 P.2d 1329, 1331. However, in this case, the record shows the State did not exercise due diligence in prosecuting its applications to revoke. It appears the State allowed Appellant's suspended sentences to expire before actually obtaining his presence in open court, even though his whereabouts were readily apparent, or could easily have been determined, from a reading of the District Court record. *See e.g. Avance v. Mills*, 1972 OK CR 89, ¶14, 495 P.2d 828, 831.

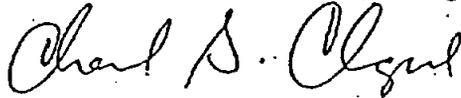
THEREFORE IT IS THE ORDER OF THIS COURT that the Order and Judgment entered on April 7, 1998, in Creek County District Court, Case Nos. CF 95-120 and CF 95-176, should be, and are hereby, REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.

IT IS SO ORDERED.

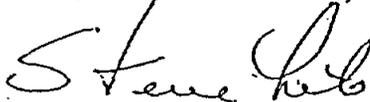
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13<sup>th</sup> day of April, 1999.



CHARLES A. JOHNSON, Judge



CHARLES S. CHAPEL, Judge



STEVE LILE, Judge

ATTEST:

  
Clerk