

DEC 08 2006

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE

CLERK

JANET MARIE RUFF, A.K.A.,
JANET M. ZACHERY,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

Case No. RE-2006-363

**ORDER AFFIRMING REVOCATION OF SUSPENDED SENTENCE
BUT MODIFYING SENTENCE TO SIX YEARS INCARCERATION**

On July 1, 2003, Appellant entered a plea of guilty in Oklahoma County District Court, Case No. CF-2002-4814, to Possession of a Controlled Dangerous Substance (Cocaine) with Intent to Distribute. Appellant was sentenced to twelve (12) years incarceration, all suspended upon completion of inpatient drug therapeutic treatment.

On March 25, 2005, the State filed an Application to Revoke Suspended Sentence.¹ On June 21, 2005, the State filed an Amended Application to Revoke Suspended Sentence.² On November 8, 2005, Appellant signed a stipulation to the allegations in the Application to Revoke. On November 29, 2005, a hearing was held before the Honorable Twyla Mason Gray, District Judge. Appellant entered a blind plea to the application and her sentence was revoked in full.³ It is from this order of

¹ The application was filed after a violation report was filed on August 27, 2004, alleging Appellant had failed to report to her probation officer, failed to make payments toward her probation fees and court costs, failed to perform random drug testing, failed to maintain employment and failed to comply with mental health and substance abuse evaluation. (O.R. 56)

² The amended application alleged Appellant had committed the new offenses of possession of drugs (marijuana) and possession of drug paraphernalia, as alleged in Lincoln County District Court Case No. CF-05-74. (O.R. 60)

³ Appellant's subsequent request to withdraw her plea to the application was denied by the District

is from this order of revocation that Appellant appeals.

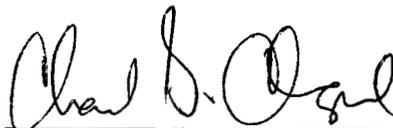
It is well settled that a violation of a suspended sentence need only be proven by a preponderance of the evidence. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. Further, a District Court's decision to revoke a suspended sentence in whole or in part is reviewable under the abuse of discretion standard. *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453.

After a review of the record, we find no abuse of discretion in the District Court's decision to revoke Appellant's suspended sentence. **IT IS THEREFORE THE ORDER OF THIS COURT** that the order of the Oklahoma County District Court revoking Appellant's sentence in Case No. CF-2002-4814 is **AFFIRMED**. However, we hereby **MODIFY** the order of revocation to six (6) years. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

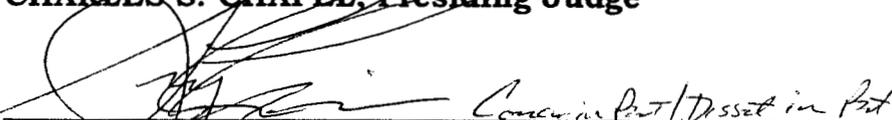
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 8th day of

December, 2006.



CHARLES S. CHAPEL, Presiding Judge

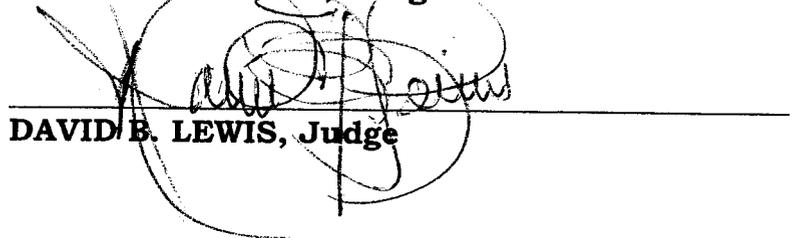


GARY L. LUMPKIN, Vice Presiding Judge

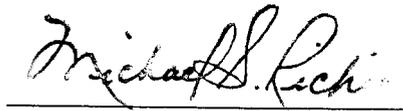
*I Concur in Affirming the Revocation but
Find there is no basis in law or fact to
Modify the sentence on Revocation.*


CHARLES A. JOHNSON, Judge


ARLENE JOHNSON, Judge


DAVID B. LEWIS, Judge

ATTEST:


Clerk

F/RA