



The State filed an application to terminate Appellant from the Drug Court program on October 3, 2007. Following a hearing November 9, 2007, the Honorable Robert G. Haney, District Judge, found the State had met its burden and terminated Appellant from the Drug Court program. Appellant was ordered to serve the remainder of his sentence in CF-2002-348 and was sentenced to thirty years imprisonment in CF-2006-197.

Appellant appeals from the Drug Court termination order. On appeal Appellant argues the District Court abused its discretion by revoking his admission into and participation in drug court.

The decision to revoke or terminate from Drug Court lies within the discretion of the Drug Court judge. *Hagar v. State*, 1999 OK CR 35, ¶11, 990 P.2d 894. Section 471.7(E) of Title 22 directs that the Drug Court judge shall recognize relapses and restarts in the program which are considered to be part of the rehabilitation and recovery process and that the trial judge shall accomplish monitoring and offender accountability by ordering progressively increasing sanctions or providing incentives rather than removing the offender from the program when relapse occurs except when the offender's conduct requires revocation from the program.

In the motion to terminate Appellant from the Drug Court program, the State alleged three new violations: (1) failure to perform community service ordered as a sanction for a previous violation, (2) failure to perform his sanction of writing 500 sentences for each day spent in jail for a previous violation and (3) failure to bring his Drug Court book with him to a meeting. Appellant agrees

that he had not completed community service but the record does not show time had expired for his completion of this sanction.

As for the State's second allegation, the Drug Court Coordinator agreed it was not specified when the sentences that Appellant was ordered to write were due. Appellant had completed writing all of them plus some prior to the termination hearing. As for Appellant's failure to bring his book with him to a meeting, on cross-examination the Drug Court Coordinator agreed Appellant could have misunderstood the question about whether he had his book with him that day. On redirect he stated Appellant had always brought his book to all of his other meetings. And, this violation was not documented at the time of the violation or reflected within his notes or documents.

Appellant argues Drug Court was working, his life was changing, he had a full-time job and he was clean and sober for the first time in more than 20 years. The record shows Appellant was working full time at a productive job. The Drug Court Coordinator testified Appellant had a good number of negative urinalysis tests and seemed to be actively trying to stay away from drugs and alcohol. Terminating Appellant from Drug Court based upon these allegations when the record does not show time had expired for Appellant to complete his community service or to complete writing thousands of sentences is an abuse of discretion.

### **DECISION**

The order terminating Appellant from the Ottawa County Drug Court Program is **REVERSED AND REMANDED WITH INSTRUCTIONS TO**

**REINSTATE APPELLANT INTO THE DRUG COURT PROGRAM.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

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

**APPEARANCES AT TRIAL**

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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

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**LUMPKIN, JUDGE: DISSENT**

The placement of an offender into a Drug Court program is an act of grace by the Court and not a right. Concomitant with the grace extended is the individual responsibility on the part of the offender to comply with the conditions of probation. The Court's opinion makes it sound like the Appellant's failure to comply with his conditions of probation is an isolated event when in fact over a period of seven months the Appellant had been sanctioned on six different occasions to a total of 25 days in jail for violations of the conditions prescribed by the Court.

Judge Haney has diligently followed the requirements of 22 O.S.2001, § 471.7(E) and (G), in recognizing relapses and restarts in the program by the Appellant. Judge Haney progressively increased Appellant's sanctions but Appellant just decided to blow off these requirements. He testified the reason he had not completed the required sentences while in jail was that he was too tired from the work week and decided to catch up on his sleep. In other words, the use of the Progressive Sanctions was at the point that further sanctions would no longer provide incentives for Appellant to comply. There can be no abuse of discretion on these facts. Judge Haney did all that he was required to do under the law. Appellant by his attitude has shown he is no longer deserving of the grace extended to him. I would affirm the decision of the District Court.