

APR 30 2014

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

MICHELLE RENEA RUNCO,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. RE 2013-0523

SUMMARY OPINION

C. JOHNSON, JUDGE:

Appellant, Michelle Renea Runco, pled guilty on September 28, 2009, to Neglect by Caretaker in Garfield County District Court Case No. CF-2009-30. She was given a five year suspended sentence with rules and conditions of probation.

The State filed an application to revoke Appellant's suspended sentence on February 8, 2012, alleging Appellant (1) failed to keep probation officer informed of her whereabouts or report as ordered, (2) failed to follow all instructions given her by her probation officer, and (3) tested positive for the use of marijuana on July 14, 2011, July 21, 2011, August 9, 2011, December 29, 2011, January 3, 2012, and January 11, 2012. Appellant appeared *pro se* at the revocation hearing on May 21, 2013, before the Honorable Paul K. Woodward, District Judge. Judge Woodward found Appellant violated the term of probation and revoked Appellant's suspended sentence in full.

Appellant appeals, raising the following issues: (1) that the full revocation of Appellant's suspended sentence was an abuse of discretion and (2) that the trial court abused its discretion in revoking Appellant's suspended sentence

“after allowing her to proceed throughout her revocation without the assistance of counsel and without a valid waiver of her right to counsel in violation of the 14th Amendment to the United States Constitution, article II, § 7 of the Oklahoma Constitution, and Oklahoma Statutes Title 22, § 991b.” In the State’s Answer Brief filed in this Court on March 6, 2014, the State concurs that the record is inadequate to show that Appellant waived her right to counsel at her revocation hearing. After reviewing the record on appeal we agree.¹

Section 991b(D) of Title 22 sets forth that the person whose suspended sentence is being considered for revocation at the hearing shall have the right to be represented by counsel. The right to counsel may be waived, but if the right to counsel is waived, “the record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. This record is mandatory and anything less is not waiver.” *Lineberry v. State*, 1983 OK CR 115, ¶ 6, 668 P.2d 1144. See *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562 (1975); *Mathis v. State*, 2012 OK CR 1, ¶ 7, 271 P.3d 67, 71-72. The State concedes and we agree that error occurred when Appellant proceeded *pro se* at her revocation hearing without the trial court obtaining on the record a valid waiver of the right to counsel. The record is void of a voluntary, intelligent and knowing waiver of the right to counsel.

¹ Because Appellant’s second proposition of error requires relief, the first proposition of error will not be addressed.

DECISION

The revocation of Appellant's suspended sentence in Garfield County District Court Case No. CF-2009-30 is **REVERSED** and **REMANDED** to the District Court for a new hearing on the State's application to revoke with Appellant represented by counsel or a valid waiver in the record. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

REVOCATION APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY, THE HONORABLE PAUL K. WOODWARD, DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: C. JOHNSON, J.

LEWIS, P.J.: CONCUR
SMITH, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
A.JOHNSON, J.: CONCUR

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