

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

BARBARA DENISE SANDERS,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2007-850

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 18 2008

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

In the District Court of Grady County, Barbara Denise Sanders, Appellant, entered pleas of guilty in Case No. CF-1999-318 to Count 1, Grand Larceny, and Count 2, False Declaration of Ownership. Additionally, Appellant entered pleas of guilty in Case No. CF-2000-187 to three counts of Bail Jumping. On November 30, 2000, pursuant to a plea agreement, the Honorable Richard G. Van Dyck, District Judge, in CF-1999-318, imposed a sentence of 270 days confinement on Count 1 and a sentence of five (5) years imprisonment on Count 2, with all but the first 270 days thereof suspended. In CF-2000-187, Judge Van Dyck sentenced Appellant to 270 days confinement in the county jail on Count 1, and to terms of two (2) years imprisonment on Counts 2 and 3 with all but the first 270 days of those terms being suspended. Judge Van Dyck ordered that each of Appellant's sentences to be served concurrently with one another and that Appellant receive credit for all time served.

On March 25, 2002, the State filed applications to revoke Appellant's suspended sentences and issued warrants for her arrest. The Applications to Revoke alleged that Appellant violated her probation as described in an attached "Case Report" dated March 18, 2002, written by Guy Huggins, Appel-

lant's probation officer. That report alleged violations in Appellant having \$360.00 in unpaid probation fees and \$760.00 in overdue court costs, in Appellant having failed to make monthly reports to her probation officer, and in Appellant having left the State of Oklahoma and having changed her residence without permission. Regarding this last violation, the Case Report stated:

Ms. Sanders was granted a travel permit to go to Denver Colorado to retrieve personal belongings from storage. Ms. Sanders was to return to the D-4 Chickasha Probation Office by July 3, 2001. Ms. Sanders has not returned to the State of Oklahoma to Officer Huggins knowledge as of March 18, 2002, and her whereabouts are unknown at this time.

(CF-2002-187 O.R. 25.)

At the evidentiary hearing upon the State's Applications to Revoke, Appellant stipulated to the factual allegations in the Case Report, but presented testimony of Appellant in mitigation of the asserted probation violations. Additionally, Appellant testified in support of her oral motion to dismiss the Applications to Revoke. Appellant's motion to dismiss claimed that the State had abandoned its Applications and had not used due diligence in prosecuting them by its having failed to bring Appellant back from Colorado for prosecution—Appellant having fled from Oklahoma to Colorado in June of 2001. Judge Van Dyck overruled Appellant's motion to dismiss, and on August 2, 2007, at the conclusion of the evidentiary hearing, he revoked the suspension orders in full.

Appellant now appeals the District Court's revocation order and raises the following propositions of error:

I. The State failed to diligently prosecute the Applications to Revoke the Suspended Sentences. As a result, the court revoked the suspended sentence after the expiration of the sentences.

II. The Judgment and Sentence does not accurately reflect the court's judgment.

In Appellant's Proposition II, she claims that there are errors in the journal entries entered by Judge Van Dyck concerning his revocation orders. As the directives we issue to the District Court in this Opinion are sufficient to cure the errors cited by Appellant, no further relief under Proposition II is required.

In Proposition I, Appellant claims the State did not act diligently in its prosecution of Appellant and therefore the revocation of Appellant's suspended sentences should be reversed. Appellant's principle argument on this issue is her claim that the State did not take appropriate measures to return Appellant to Oklahoma for prosecution of the Applications to Revoke. As concerns the revocation in CF-1999-318, that claim will be discussed below; however, it is a different lack of due diligence that requires reversal of the revocation orders in CF-2000-187.

On Counts 2 and 3 in CF-2000-187, Appellant received concurrent terms of two (2) years imprisonment with all but the first 270 days of those terms being suspended. When imposing these sentences, the District Court granted Appellant credit for time served. The sheriff's return on the Judgment and Sentence calculates the credited jail time accumulated prior to sentencing, and certifies the sheriff released Appellant on November 30, 2000, the day of sentencing. (CF-2000-187 O.R. 6.) Therefore, having been given credit for 270 days of confinement on the day of her sentencing, Appellant's two-year sentences on Counts 2 and 3 lapsed 270 days (approximately nine months) before two years from imposition of sentence.¹ As a result, the State's Application to

¹ See *Harris v. State*, 1989 OK CR 10, ¶ 2, 772 P.2d 1329, 1329-30 (where defendant, on April 27, 1984, received a two-year sentence that was suspended except for the first 30 days, with

Revoke in CF-2000-187, having been filed on March 25, 2002, was not filed in time to invoke the District Court's jurisdiction, and the revocation orders in that case must be reversed with instructions to dismiss.

Remaining is Appellant's argument that lack of due diligence in revoking the suspended portion of Appellant's five-year sentence on Count 2 in CF-1999-318 requires reversal. The Court has reviewed Appellant's arguments and finds her matter is distinguishable from the case of *Cheadle v. State*, 1988 OK CR 226, 762 P.2d 995, upon which she relies. In that case, the defendant was incarcerated within Oklahoma, and the prosecution was aware of the defendant's whereabouts when it filed its motion to revoke. Additionally, the evidence revealed the defendant was never aware of the State's action to revoke until he was released from prison after having served that subsequent conviction (apparently the same conviction upon which the State was relying as its grounds for revocation). *Cheadle* ¶ 4, 762 P.2d at 996.

In Appellant's matter, her own testimony revealed that while on probation she had fled Oklahoma to Colorado. While having absconded to Colorado, Appellant became aware of the State's revocation warrants, but for years she took no action to resolve them until April of 2007, whereupon she was promptly returned to Oklahoma and tried upon the Applications to Revoke. Moreover, the most Appellant could offer to prove the State was aware before then of her whereabouts was her testimony to double hearsay statements of Colorado officials who told her that officials from Oklahoma had said they were not willing to bring her back to Oklahoma.

credit for time served, and jail records showed that he served thirty-seven days in jail prior to sentencing, "two year sentence would expire thirty-seven days before two years from [sentencing]"; hence, application to revoke filed on April 28, 1986, "could not invoke the jurisdiction of the District Court").

On this record, such testimony was not enough to require the District Court to grant Appellant's motion to dismiss. The District Attorney had warrants issued for Appellant's arrest immediately upon the filing of the Applications to Revoke. The double hearsay testimony of Appellant falls short of proving that the State's attorneys did not take all steps reasonably necessary to have the warrants enforced or that their office, in fact, knew the whereabouts of Appellant but declined to have her arrested or a detainer lodged against her. Because the decision of the District Court to deny Appellant's motion to dismiss finds support within the record, it will not be overturned.

DECISION

The August 2, 2007, final order of the District Court of Grady County, revoking in full the suspended portion of the five-year sentence of Appellant, BARBARA DENISE SANDERS, on Count 2 in Case No. CF-1999-318, is **AF-FIRMED**; PROVIDED HOWEVER, the District Court shall strike its journal entry of "Judgment and Sentence on Motion to Revoke Suspended Sentence" filed in that case and enter a proper journal entry showing only the revocation of the suspension order on Count 2.² The August 2, 2007, order of the District Court revoking Appellant's suspended sentences in CF-2000-187 is **RE-VERSED WITH INSTRUCTIONS TO DISMISS** the Application to Revoke. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

² The District Court is reminded that when entering an order of revocation, a new judgment and sentence is not entered, instead, there issues an order executing the sentence previously imposed. See *Hemphill v. State*, 1998 OK CR 7, ¶¶ 6-9, 954 P.2d 148, 150-51 (explaining what procedurally occurs when a suspended sentence is pronounced and a revocation application subsequently granted.)

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OPINION BY: LEWIS, J.
Lumpkin, P.J.: Concurs
C. Johnson, V.P.J.: Concurs
Chapel, J.: Concurs
A. Johnson, J.: Concur in Results

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