

accelerate Smith's deferred sentence was a new case filed against Smith.² Because the acceleration of Smith's sentence was based upon an act committed after the term of his deferred sentence had expired, we must remand this matter to the District Court with instructions to **DISMISS**.

DECISION

The order of acceleration of the Judgment and Sentence in Tulsa County District Court Case No. CF-2003-4739 is hereby **REVERSED** and this matter is remanded to the District Court with instructions to **DISMISS**. 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 TULSA COUNTY THE HONORABLE TOM C. GILLERT, DISTRICT JUDGE

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² (Tr. of August 8, 2008, hearing on State's application to accelerate, pp. 4 - 5.)

OPINION BY: CHAPEL, J.

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

LUMPKIN, JUDGE: DISSENT

I must respectfully dissent due to the fact the Court's opinion fails to accurately reflect the chronology of events and the action taken by the trial court.

The Appellant pled no contest in Tulsa County District Court, Case No. CF-2003-4739, to Unlawful Possession of a Controlled Drug. The Court deferred imposition of the judgment and sentence for a period of two years, or until July 22, 2006. The state filed an Application to Accelerate Judgment on February 9, 2005, and on March 1, 2006, Appellant confessed the state's application. Therefore, the trial court had the authority to immediately accelerate the sentencing and impose a judgment and sentence on that date. Instead, the trial court decided to continue the imposition of judgment and sentence until September 11, 2006, to give the Appellant one more chance to ameliorate what the court's decision on sentencing would be. We have previously authorized this type of procedure in *State v. Rodriguez*, 1976 OK CR 68, 547 P.2d 974, 975, and allowed it even in those cases where the sentencing date occurs after the end of the deferred term. Because the Appellant failed to appear on September 11, 2006, a bench warrant was issued and the sentencing hearing finally held on August 8, 2008.

While I agree that a decision to revoke or accelerate cannot be based on violations occurring after the term of suspension or deferral has expired, that is not exactly what happened in this case. The Appellant confessed the violation

of the terms and conditions of probation. The trial court was authorized to enter judgment and sentence the Appellant on the date of that confessed violation. Instead, the court put off that decision until September 11, 2006, when the Appellant failed to appear and a bench warrant had to be issued. While the trial court could not consider the new charges filed after the expiration of the time of probation, it could consider the failure to appear.

Instead of reversing and dismissing the case, in disregard of the fact Appellant confessed a violation of his deferred sentence, the Court should remand the case for resentencing based only on the evidence which was proper to consider.