

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

**LON ADAM SMITH,**

**Appellant,**

**v.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

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) **NOT FOR PUBLICATION**  
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**No. RE-2012-835**

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

**APR 29 2014**

**SUMMARY OPINION**

**C. JOHNSON, JUDGE:**

**MICHAEL S. RICHIE**  
**CLERK**

The Appellant, Lon Adam Smith, appeals from Judgments and Sentences on Motions to Revoke Suspended Sentences entered by the Honorable Richard E. Branam, District Judge, in Case Nos. CF-2009-163, CF-2009-164 and CF-2009-165 in the District Court of Atoka County. On March 10, 2010, Appellant entered pleas of no contest in all three cases. In Case No. CF-2009-163, Appellant was convicted of Assault and Battery With a Dangerous Weapon, and was sentenced to a term of fifteen years, all to be suspended upon successful completion of the RID<sup>1</sup> and DARP programs, to run concurrently with the other cases. In Case No. CF-2009-164, Appellant was convicted of Domestic Abuse - Assault and Battery, and was sentenced to a term of four years, all suspended upon successful completion of the RID Program, and concurrent with the other cases. In Case No. CF-2009-165,

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<sup>1</sup> The Regimented Inmate Discipline ("RID") Program, also recognized as the Delayed Sentencing Program for Young Adults ("DSPYA"). 22 O.S.2011, § 996.

Appellant was convicted of Possession of a Firearm After Former Felony Conviction, and was sentenced to a term of ten years, all suspended upon successful completion of the RID Program, and concurrent with the other cases.

On August 10, 2011, the State filed motions to revoke Appellant's suspended sentences in all three cases alleging he violated probation by failing to successfully complete the DARP program. On March 30, 2012, the State filed amended motions to revoke Appellant's suspended sentences in all three cases alleging he violated probation (1) by failing to successfully complete the treatment program ordered by the Court; and (2) by being in arrears for court costs in the amount of \$2,536.00. On April 18, 2012, the revocation hearing was held before Judge Branam. Appellant admitted and stipulated to the alleged violations. Judge Branam revoked Appellant's suspended sentences and entered Judgments and Sentences on Motions to Revoke Suspended Sentences. In Case No. CF-2009-163, Judge Branam sentenced Appellant to fifteen years in the Department of Corrections ("DOC"), with the last five years suspended and running concurrently with the other sentences. In Case No. CF-2009-164, Judge Branam sentenced Appellant to four years in the DOC, to run concurrently with the other sentences. In Case No. CF-2009-165, Judge Branam sentenced Appellant to ten years in the DOC, to run concurrently with the other sentences.

Appellant asserts one proposition of error in this appeal:

- I. MR. SMITH'S ORIGINAL SENTENCES WERE IMPERMISSIBLY EXTENDED BY THE ACTIONS OF THE

DISTRICT COURT AT THE TIME OF THE REVOCATION OF  
APPELLANT'S SUSPENDED SENTENCES.

**ANALYSIS**

At the hearing on April 18, 2012, Judge Branam believed he was imposing original sentences in Case Nos. CF-2009-163, CF-2009-164 and CF-2009-165 after Appellant's failure to successfully complete the RID and/or DARP programs. However, the District Court had not properly placed Appellant in or properly processed him through DSPYA. First, Appellant did not qualify for placement in DSPYA. Offenders who are eligible for DSPYA must have a verdict or plea "for a nonviolent felony offense." 22 O.S.2011, § 996.1. Appellant pled guilty to Assault and Battery With a Dangerous Weapon in Case No. CF-2009-163, which does not qualify as a nonviolent felony offense. 57 O.S.2011, § 571(2)(a) ("[n]onviolent offense" means any felony offense except . . . assault and battery with a dangerous . . . weapon.). Second, "[u]pon a verdict of guilty or a plea of guilty or nolo contendere of an offender, the court shall delay sentencing for a period not less than one hundred eighty (180) days nor more than one (1) year after the plea of guilty or finding of guilt is entered and order the offender to the Delayed Sentencing Program for Young Adults under the custody of the Department of Corrections." 22 O.S.2011, § 996.3(A). Judge Branam did not delay sentencing after Appellant's pleas on March 10, 2010, but instead imposed Judgments and Sentences in all three cases. Third, those Judgments and Sentences did not state that the sentences were to begin upon successful completion of RID, but stated Appellant was "sentenced . . .

[with] [a]ll to be SUSPENDED upon successful completion of RID PROGRAM.”<sup>2</sup> Finally, no pertinent action was taken in Appellant’s cases until July 19, 2011, when the District Court entered the Minute Order noting Appellant had completed RID and was being released to enter DARP. Thus, the District Court also violated the RID statute, which only allows sentencing to be delayed “for a period not less than one hundred eighty (180) days nor more than one (1) year after the plea of guilty or finding of guilt is entered.” 22 O.S.2011, § 996.3(A). Therefore, Judge Branam’s actions in this case are not in accordance with DSPYA (or RID) such that Appellant’s sentencing can be considered delayed pursuant to the statutes.

On March 10, 2010, the District Court imposed Judgments and Sentences in all three cases, which state that Appellant is guilty and is sentenced to the applicable terms under the custody and control of DOC, all to be suspended upon successful completion of the program(s). Motions to revoke suspended sentences were filed in these cases, and on April 18, 2012, Judge Branam conducted a revocation hearing. But, according to the express language of the March 10, 2010, Judgments and Sentences, the sentences had not yet been suspended. Therefore, the decision on April 18, 2012, was more in the nature of a decision not to suspend the sentences, except for five years in Case No. CF-2009-163, due to Appellant’s failure to successfully complete RID and/or DARP.

The Judgments and Sentences imposed March 10, 2010, also state that

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<sup>2</sup> Appellant’s Judgment and Sentence in Case No. CF-2009-163 also states that Appellant “is to successfully complete the DARP PROGRAM after the RID PROGRAM.”

Appellant was convicted and “sentenced” effective March 10, 2010. Because the Judgments and Sentences on Motions to Revoke Suspended Sentences entered April 18, 2012, state that Appellant is sentenced as of that date, Appellant correctly argues, and the State agrees, that his sentences were impermissibly extended beyond the term of the original sentences.

Our state's sentencing statutes contemplate that when a defendant is sentenced he receives only one sentence, not multiple ones. *Grimes v. State*, 2011 OK CR 16, ¶ 10, 251 P.3d 749, 753. A defendant's suspended sentence may not be lengthened by intervening revocation orders occurring within the original term of sentence. *Id.* at ¶ 9. The district court's power and authority to revoke all or part of an unrevoked portion of the suspended sentence ends upon the expiration of the original term of the sentence. *Id.*

The April 18, 2012, Judgments and Sentences on Motions to Revoke Suspended Sentences in all three cases must be amended to reflect that both Appellant's original sentences and his revoked sentences began on March 10, 2010. In Case No. CF-2009-163, the decision should also be amended to reflect that the original term of Appellant's fifteen year sentence expires at midnight March 9, 2025. *Grimes, supra*, 2011 OK CR 16 at ¶ 10, 251 P.3d 749 at 753. DOC has credited Appellant for time served on his sentences from March 10, 2010, until April 18, 2012, which the State acknowledges is proper, and such crediting shall continue until the terms of imprisonment for the revoked ten year sentences have been satisfied. Once the revoked ten year sentences are satisfied, the five year suspended balance of Appellant's sentence

in Case No. CF-2009-163 will be subject to revocation until March 10, 2025.

**DECISION**

The Judgments and Sentences on Motions to Revoke Suspended Sentences entered by the District Court of Atoka County in Case Nos. CF-2009-163, CF-2009-164 and CF-2009-165 should be, and are hereby **REVERSED** and **REMANDED** to the District Court to amend those decisions in accordance with this opinion. 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.

AN APPEAL FROM THE DISTRICT COURT OF ATOKA COUNTY  
THE HONORABLE RICHARD E. BRANAM, DISTRICT JUDGE

**APPEARANCES IN DISTRICT COURT**

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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

RB/F

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