

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WAYLON DEAN SNYDER,
Appellant,
-vs.-
THE STATE OF OKLAHOMA,
Appellee.

NOT FOR PUBLICATION

No. RE-2013-555

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN -2 2014

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LUMPKIN, JUDGE:

On March 11, 2009, in the District Court of Washington County, Case No. CF-2008-62, Appellant, Walyon Dean Snyder, while represented by counsel, entered a plea of guilty to Possession of Marijuana within 1,000 Feet from a Park or School in violation of 63 O.S.Supp.2007, § 2-402(C). Pursuant to a plea agreement, the Honorable Curtis L. DeLapp, District Judge, sentenced Appellant to five (5) years imprisonment, all suspended except for the first thirty (30) days pursuant to written conditions of probation.

On August 1, 2011, under an agreed disposition of a Motion to Revoke Suspended Sentence that the State had filed, Judge DeLapp admitted Appellant to the Washington County Drug Court Program as a condition of Appellant's probation.¹ Under Appellant's admission agreement, if Appellant successfully completed Drug Court, he would be returned to probation under his suspended sentence, but if he failed to complete Drug Court, the suspen-

¹ Section 471.8 of the Oklahoma Drug Court Act permits drug court programs to be utilized under certain conditions as a disciplinary sanction in cases where an offender has a suspended sentence and violates a condition of that sentence. 22 O.S.2011, § 471.8. Appellant's admission into the Drug Court Program was received in Washington County Drug Court Case No. DC-2011-24.

sion order would be revoked and Appellant would be ordered to serve the remainder of his five-(5)-year sentence of imprisonment.

On March 13, 2012, the State filed an Application asking Appellant be terminated from Drug Court and his sentence executed. The Application set forth three violations for which Appellant had not been sanctioned. The first violation was Appellant showing positive for THC on February 21, 2012. The second and third violations were for having associated on February 25, 2012, with two individuals who both had criminal records. The day after this Application was filed, Appellant, while represented by counsel, executed a written stipulation acknowledging that he had failed to comply with the terms of his Drug Court Performance Contract. A transcript of these particular proceedings does not exist, but a docket entry for this March 14th hearing reveals that the stipulation was received in agreement that Appellant would be admitted to an inpatient treatment facility and remain in custody of the sheriff "until a bed can be found." A notation by Judge DeLapp contained in the stipulation document shows the court took the Application "under advisement" pending Appellant going to inpatient treatment.

The next day, March 15th, Appellant was admitted to an inpatient facility and one month later, on April 16, 2012, he appeared with counsel after completing his inpatient treatment. Appellant was directed to appear back on the Drug Court docket and his court-appointed counsel was allowed to withdraw. After this April 16th proceedings, the docket entries that follow in the Drug Court case for the next twelve months show Appellant appeared *pro se* before the Drug Court, usually two times a month but at least once per month. At each of those appearances, it was reported Appellant was doing well in the Drug Court Program. Not until March 25, 2013, does the first docket

entry occur reflecting negative information. Despite mixed reports of difficulties, an April 29, 2013, entry states Appellant is “to be allowed to stay in Drug Court.”

On May 14, 2013, the District Court reappoints counsel, and on May 28th Appellant’s case comes before the trial court. Judge DeLapp began that hearing by observing “we already had a previous stipulation,” a reference to the document Appellant had executed more than a year earlier where he had stipulated to the State’s Application of March 13, 2012. Although the precise violations of concern are not clear, it appears from what transpired at this May 14th proceeding that Appellant was being accused of violating his Drug Court agreement by not being present for a home visit, not calling in to report, and by having “missed two U.A.’s” (urinalysis for substance abuse).

Defense counsel countered that Appellant was home by curfew and that the Drug Court probation officer may have arrived too early. Counsel also related that Appellant’s out-of-town employment had prevented his return until 4:45 P.M., at which time it was too late for him to appear for urinalysis. Present in the courtroom was Appellant’s probation officer. On hearing counsel’s statement, the officer spoke up, and based on what she had been told by Appellant’s former employer, took issue with Appellant’s out-of town employment claim. On this Judge DeLapp, based on Appellant’s prior stipulation, terminated Appellant from Drug Court and ordered execution of his five-year sentence.

From that termination and final order of revocation, Appellant appeals and raises the following proposition of error:

The State failed to inform Appellant regarding the allegations on which it would rely to advocate his termination from the Drug

Court Program. In the absence of this constitutionally-mandated notice, Appellant's termination from the program was error.

Having thoroughly considering this proposition of error and the entire record before this Court, including the original record, transcript, and briefs of the parties, the Court **FINDS** Appellant's matter must be reversed with instructions to dismiss.

Appellant claims that the order terminating him from Drug Court must be reversed for lack of a written notice of the violations on which the State would rely for termination. As Appellant did not raise this due process objection at his hearing, we will review only for plain error.² The Oklahoma Drug Court Act provides that "[a]ny revocation from the drug court program shall require notice to the offender and other participating parties in the case and a revocation hearing." 22 O.S.2011, § 471.7. In *Hagar v. State*, 1999 OK CR 35, ¶ 14, 990 P.2d 894, 898-99, this Court found this provision required the State to file a written application asking for termination, and "[i]n order to meet the requirements of due process, the written notice must set forth the reasons for termination with such clarity that the defense is able to determine what reason is being submitted as grounds for revocation/termination, enabling preparation of a defense to the allegation," and "omission of such a notice violates the statute and the requirements of due process."

In support of the District Court's May 28, 2013, termination order, the State asks that we look to its Application to Terminate that it filed on March 13, 2012, as providing the required written notice for termination. We do not find that Application can be utilized in this case as the State requests, as that

² See *Tate v. State*, 2013 OK CR 18, ¶¶ 30-37, 313 P.3d 274, (on appellate review, defendant waived all but plain error when she failed to raise before the trial court that due process violation claimed to have occurred in proceedings that terminated her from mental health court).

Application was previously adjudicated by the Drug Court and final disposition made. Such disposition is apparent from the record of those actions taken by the Drug Court on that Application. After the Drug Court received Appellant's stipulation to that Application's violations, the Drug Court Judge addressed those violations by placing Appellant in an inpatient treatment facility, reviewed Appellant's matter on his release from treatment, returned Appellant to the Drug Court docket, permitted the attorney appointed to represent Appellant on the Application to withdraw, and allowed Appellant to proceed in Drug Court to complete its program. Since Appellant was readmitted to Drug Court, to terminate him from that program required the filing of a new written notice setting forth any subsequent violations to be raised as grounds for termination. As this fundamental prerequisite for termination is absent in Appellant's case, and as the record presented does not reveal that error to be harmless,³ the Drug Court's order of termination and the District Court's corresponding order of revocation must both be reversed.

Additionally, we find instructions to dismiss must be accompany our decision to reverse. A court may not extend the length of probation imposed under a suspended sentence. See *Robertson v. State*, 1977 OK CR 74, ¶ 4, 560 P.2d 1039, 1040 (where defendant received a five-year suspended sentence, and over four years later, the trial court revoked a one-year portion of the suspension order and entered orders that had been construed as requiring the defendant to remain on probation an additional four years, the Court held the

³ In *Hagar*, the Court also held, "In order to meet the requirements of due process, the judge shall state on the record the reasons for the revocation/termination. This is to include the conditions violated and reasons why disciplinary sanctions have been insufficient or are not appropriate." *Hagar*, 1999 OK CR 35, ¶ 15, 990 P.2d at 899 (citation omitted). In Appellant's case, there lacks in both the transcript and the written termination order findings adequate to comply with these due process requirements. That circumstance contributes to the Court's inability to find harmless error in Appellant's matter.

trial court “was without authority to order additional *suspended* time past the term of the original judgment and sentence”) (italics in original); *accord Hemphill v. State*, 1998 OK CR 7, ¶¶ 8-9, 954 P.2d 148, 151.

In Appellant’s case, his five-(5)-year sentence, all suspended except for the first thirty (30) days, was imposed on March 11, 2009. By its terms, that sentence lapsed on the expiration of March 10, 2014.⁴ *Grimes v. State*, 2011 OK CR 16, ¶ 12, 251 P.3d 749, 754 (“the original calendar year term of a sentence, the execution of which is suspended, controls, and governs the time period during which a district court has power to revoke all or part of a suspended sentence”). As that date has past, and as there is not a timely filed revocation/termination application that remains adjudicated and pending in his case, Appellant cannot be subject to further revocation proceedings. Accordingly, further District Court proceedings in execution of his term of imprisonment must be dismissed.

DECISION

The final orders of May 28, 2013, in the Washington County Drug Court and District Court, terminating Appellant from the Drug Court Program in Case No. DC-2011-24 and revoking the order that had suspended the execution of sentence in Case No. CF-2008-62, are **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

⁴ In regard to Appellant’s length of sentence, the Court notes that it exceeds the maximum two-year term of imprisonment allowed for a first offense under 63 O.S.Supp.2007, § 2-402(C), the statutory provision Appellant was convicted of violating on his guilty plea to Count 1 as amended. Because we find dismissal of Appellant’s matter is required on other grounds, further analysis of this length of sentence issue is unnecessary.

AN APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY
THE HONORABLE CURTIS L. DELAPP, DISTRICT JUDGE

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OPINION BY: LUMPKIN, J.

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SMITH, V.P.J.: CONCUR
C. JOHNSON, J.: CONCUR
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