

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROGELIO SOLIS, JR.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION

No. RE 2014-0777

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 13 2015

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, VICE PRESIDING JUDGE:

Appellant, Rogelio Solis, Jr., pled guilty December 20, 2011, to Count 1 - Domestic Abuse – Assault and Battery, a felony. He was sentenced to five years in the Department of Corrections, suspended except for three months, with credit for time served and a \$1,000.00 fine. Count 2 – Robbery First Degree, a felony, Count 3 – Threaten to Perform Act of Violence, a misdemeanor, and Count 4 – Interference With Emergency Telephone Call, a misdemeanor, were dismissed.

On March 5, 2014, the State filed a motion to revoke Appellant’s suspended sentence alleging Appellant violated the rules and conditions of probation when he was arrested and pled guilty to public intoxication in Cherokee County and was also arrested in Mayes County and entered a plea of no contest to Driving Under the Influence of Alcohol, Transporting an Opened Container and Failure to Maintain Lane. Following a revocation hearing on August 29, 2014, the Honorable Rebecca J. Gore, Special Judge, found Appellant violated the rules and conditions of probation and revoked

Appellant's suspended sentence in full, four years and nine months, with credit for time served.

Appellant appeals the revocation of his suspended sentence raising the following propositions of error:

1. Revocation in full was excessive.
2. The trial court lacked authority to impose post-imprisonment supervision.

We affirm the order of the District Court revoking Appellant's suspended sentence but, finding merit to Appellant's second proposition of error, remand the matter to the District Court for further proceedings as set forth below.

1.

Appellant argues that revocation in full was excessive and an abuse of discretion based on his efforts to comply with his probation officer's directives and the improper influences considered by the trial court. The decision to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and such decision will not be disturbed absent an abuse thereof. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3rd 554, 557. "An 'abuse of discretion' has been defined by this Court as a 'clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application.'" *Walker v. State*, 1989 OK CR 65, ¶ 5, 780 P.2d 1181, 1183. Appellant has not shown an abuse of discretion in this case. The record does not support Appellant's argument that the trial court improperly considered new charges which were not alleged in the State's application or Appellant's medical issues in making her ruling.

Section 991a-21 of Title 22 applies to those persons convicted and sentenced on or after November 1, 2012. Section 991a-21 requires the trial court to include a term of post-imprisonment supervision in the sentence of any person who is convicted of a felony and sentenced to a term of confinement with the Department of Corrections. In this case the trial court ordered Appellant to serve a term of post-imprisonment supervision. Appellant argues that he is not subject to the provisions of Section 991a-21 of Title 22 and the State agrees, as the conviction in this case was entered on December 20, 2011. We agree that this proposition of error has merit.

DECISION

The revocation of Appellant's suspended sentence in Craig County District Court Case No. CF-2011-153 is **AFFIRMED, but the matter is REMANDED to the District Court to modify the Judgment and Sentence to exclude any requirement for post-imprisonment supervision.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE is ORDERED** issued upon the filing of this decision.

REVOCATION APPEAL FROM THE DISTRICT COURT OF CRAIG COUNTY, THE HONORABLE REBECCA J. GORE, SPECIAL JUDGE

APPEARANCES AT REVOCATION PROCEEDING

DANIEL GIRALDI
THE HARTLEY LAW FIRM
177 WEST DELAWARE AVENUE
VINITA, OKLAHOMA 74301
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

RANA HILL
APPELLATE DEFENSE COUNSEL
P. O. BOX 926
NORMAN, OKLAHOMA 73070
COUNSEL FOR APPELLANT

SEAN MCCONNELL
ASSISTANT DISTRICT ATTORNEY
210 WEST DELAWARE AVENUE
VINITA, OKLAHOMA 74301
COUNSEL FOR THE STATE

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
JOSHUA L. LOCKETT
ASSISTANT ATTORNEY GENERAL
313 N.W. 21st STREET
OKLAHOMA CITY, OKLAHOMA 73105
COUNSEL FOR THE STATE

OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: CONCUR IN RESULT
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

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