

APR 18 2014

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE  
CLERK

CARRIE DENISE STUMPF, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

No. RE 2013-0511

SUMMARY OPINION

**A. JOHNSON, JUDGE:**

Carrie Denise Stumpff, Appellant, pled guilty on November 22, 2005, to Driving While Under the Influence of Alcohol, AFC, in Washington County District Court Case No. CF-2005-118. Sentencing was delayed pending Stumpff's completion of Drug Court. Stumpff successfully completed Drug Court and was sentenced on April 21, 2009, to five years suspended with rules and conditions of probation.

The State filed a motion to revoke Stumpff's suspended sentence on February 8, 2012, alleging she (1) failed to complete substance abuse treatment as ordered, (2) failed to maintain full-time employment as ordered, and (3) failed to pay probation fees as ordered. On April 17, 2012, Stumpff, *pro se*, waived her right to an attorney, waived her right to a revocation hearing, and stipulated to the State's allegations in the motion to revoke. The Honorable Curtis L. DeLapp, District Judge, accepted Stumpff's stipulation, revoked her suspended sentence, and took sentencing under advisement,

giving Stumpff another opportunity to get into compliance. Stumpff, represented by appointed counsel, was sentenced on May 14, 2013, to five years imprisonment.

Stumpff appeals, raising the following issues: (1) that the trial court failed to conduct a hearing to determine whether Stumpff invoked her right to represent herself at her revocation proceeding, and (2) that the revocation of five years of Stumpff's suspended sentence was excessive. In the State's Answer Brief filed in this Court on January 30, 2014, the State agrees that the trial court failed to conduct a hearing to determine whether Stumpff knowingly waived her right to counsel and concedes that this error requires reversal and remand to the District Court. After reviewing the record on appeal we agree.<sup>1</sup>

Section 991b(D) of Title 22 sets forth that the person whose suspended sentence is being considered for revocation at the hearing shall have the right to be represented by counsel. The right to counsel may be waived, but if the right to counsel is waived, "the record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. This record is mandatory and anything less is not waiver." *Lineberry v. State*, 1983 OK CR 115, ¶ 6, 668 P.2d 1144. See *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562 (1975); *Mathis v. State*, 2012 OK CR 1, ¶ 7, 271 P.3d 67, 71-72. The State concedes and we agree that the record in this case contains no appropriate

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<sup>1</sup> Because Stumpff's first proposition of error requires relief, the second proposition of error will not be addressed.

colloquy between Stumpff and the trial court sufficient to demonstrate a knowing waiver of counsel.

**DECISION**

The revocation of Stumpff's suspended sentence in Washington County District Court Case No. CF-2005-118 is **REVERSED** and **REMANDED** to the District Court for further proceedings consistent with this Opinion. Appellant's Request to Supplement Existing Appeal Record and Alternative Application for *Faretta v. California* Hearing, tendered for filing on December 2, 2013, is rendered moot. 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.

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

**APPEARANCES AT TRIAL**

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**OPINION BY: A. JOHNSON, J.**

LEWIS, P.J.: Concur

SMITH, V.P.J.: Concur

LUMPKIN, J.: Concur

C.JOHNSON, J.: Concur

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