



Honorable Thomas S. Landrith, District Judge, that they had reached an agreement whereby Appellant agreed to participate in a Drug Court program, and agreed to delayed execution of his suspended sentence. Appellant agreed that termination from Drug Court would result in the imposition of his original sentences, which would then be run consecutively instead of concurrently.

On July 31, 2008, the State filed an Application to Terminate Appellant from Drug Court. On August 19, 2008, Appellant's Drug Court participation was terminated, and he was sentenced to the Department of Corrections, as ordered in his original suspended sentence, with the exception that the sentences were now ordered to be served consecutively instead of concurrently. Appellant appeals his Drug Court termination and raises the following issues:

1. The trial court abused its discretion when it revoked Appellant's suspended sentences and ordered the terms to be served consecutively instead of concurrently;
2. Trial counsel was ineffective for allowing Appellant to enter into a Drug Court agreement that effectively lengthened his original sentences; and
3. Appellant was denied effective assistance of counsel upon entry of his original guilty plea, which he now claims is invalid.

The order terminating Appellant from Drug Court is **AFFIRMED**. The District Court's order is **VACATED** and the matter is **REMANDED** to the District Court of Pontotoc County for issuance of an order directing that Appellant's sentences, to the extent they are revoked, are to be served concurrently, not consecutively.

Appellant does not dispute that he violated the terms and conditions of the Drug Court program, and we find no abuse of discretion in the District Court's

termination of his Drug Court participation. We find merit, however, in Appellant's claim that it was error for the District Court to order his sentences to run consecutively when the original sentence imposed ordered the sentences to be served concurrently.

At a hearing where the State seeks revocation of a suspended sentence, the question is whether the sentence originally imposed should be executed, and the court makes a factual determination as to whether or not the terms of the suspended sentence have been violated. *See, Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The consequence of judicial revocation is to execute a penalty previously imposed in a judgment and sentence. *Id.*; *Burnham v. State*, 2002 OK CR 6, fn. 2; 43 P.3d 387, 390; *Degraffenreid v. State*, 1979 OK CR 88, 599 P.2d 1107; *Bishop v. State*, 1979 OK CR 9, ¶ 4, 593 P.2d 505, 507; *Marutzky v. State*, 1973 OK CR 398, ¶ 5, 514 P.2d. 430. This Court recognizes that upon termination from Drug Court, the only authorized punishment is that to which the parties agreed at admission. *See*, 22 O.S. 2001, § 471.7(E) and (G); *Hagar v. State*, 1999 OK CR 35, ¶ 11, 990 P.2d 894, 898.

When Appellant entered into this Drug Court agreement, however, he had already been sentenced in Case No. CF-2005-215. The execution of that sentence was merely suspended pending completion of Appellant's probation. In admitting Appellant to the Drug Court program, and delaying sentencing on the State's application to revoke pending the Drug Court outcome, the District Court simply delayed execution of the original suspended sentence. Appellant's agreement to a

longer sentence upon termination from Drug Court was void. The District Court's sentencing authority, upon terminating Appellant from Drug Court, was to revoke, in full or in part, the remaining unserved portion of Appellant's original suspended sentences. As those sentences were originally ordered to be served concurrently, the District Court had no authority to order them to be served consecutively after Appellant was terminated from Drug Court.

Appellant's final claim presented at Proposition 3, that he was denied effective assistance of counsel upon entry of his original guilty plea in Pontotoc County Case No. CF-2005-215, is not properly presented as part of Appellant's Drug Court termination appeal. The scope of review for an appeal of a Drug Court termination is limited to the validity of the termination order. Rule 1.4(D)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010). Any challenge Appellant might have regarding the validity of his conviction must be presented in a direct appeal of that conviction pursuant to the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010).

#### **DECISION**

Appellant's termination from Drug Court in Pontotoc County Case No. CF-2005-215 is **AFFIRMED**. The order revoking Appellant's suspended sentences in full and directing that they be served consecutively is **VACATED**, and this matter is **REMANDED** to the District Court of Pontotoc County with instructions to issue an order consistent with this Court's opinion. Pursuant to Rule 3.15, *Rules of the*

*Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY, THE  
HONORABLE THOMAS S. LANDRITH, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

JASON D. CHRISTOPHER  
211 WEST 13<sup>TH</sup> STREET  
ADA, OK 74820

COUNSEL FOR APPELLANT

JAMES E. TILLISON  
ASSISTANT DISTRICT ATTORNEY  
PONTOTOC COUNTY  
105 WEST 13<sup>TH</sup> STREET  
ADA, OK 74820

COUNSEL FOR THE STATE

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

C. JOHNSON, P.J.: Concur  
LUMPKIN, J.: Concur  
CHAPEL, J.: Concur  
LEWIS, J.: Concur

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**APPEARANCES ON APPEAL**

TERRY J. HULL  
P.O. BOX 926  
NORMAN, OK 73070

COUNSEL FOR APPELLANT

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF  
OKLAHOMA  
JENNIFER L. STRICKLAND  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105

COUNSEL FOR THE STATE