

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

**JOSHUA DEE TAYLOR,**  
**Appellant,**  
**-vs.-**  
**THE STATE OF OKLAHOMA,**  
**Appellee.**

**NOT FOR PUBLICATION**

**No. RE-2010-819**

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

**JAN 30 2012**

**SUMMARY OPINION**

**LUMPKIN, JUDGE:**

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

In the District Court of Custer County, Appellant, Joshua Dee Taylor, while represented by counsel, entered pleas of guilty to Count 1: Assault with a Dangerous Weapon, and Count 2: Domestic Abuse—Assault and Battery in Presence of Minors, a misdemeanor, in Case No. CF-2009-338. On January 20, 2010, the Honorable Donna L. Dirickson, Special Judge, sentenced Appellant to seven (7) years imprisonment on Count 1 and to one (1) year confinement on Count 2. Pursuant to a plea agreement, Judge Dirickson ordered the sentences to be served concurrently and suspended execution of the sentences conditioned on written rules of probation.

On July 30, 2010, the State filed a “Second Motion to Revoke Suspended Sentences.” The thrust of that motion was that Appellant violated the probation rules that required that he: report to his probation officer, not leave the state without permission, not change address without notification, not use illegal drugs, pay probation supervision fees, complete a “Domestic Violence Inventory and Anger Management” and comply with recommendations, and take his medications as prescribed. On August 19, 2010, following an evidentiary hearing on the State’s motion, Judge Dirickson found Appellant

violated the conditions of probation and revoked a three-year portion of her suspension order on Count 1. From this final order of revocation, Appellant appeals and raises the following propositions of error:

I. While the court orally ordered three years of the seven-year suspended sentence revoked, the written "Judgment and Sentence on Motion to Revoke" must be corrected as an inconsistent and illegal imposition of additional suspended time past the expiration of the original judgment and sentence.

II. Because psychiatric medication was no longer needed for Mr. Taylor to comply with the court's oral order to continue his current treatment regimen, the written order to "stay on current medications" was unreasonable, and revoking on this basis was an abuse of discretion.

III. Due to Mr. Taylor's mental state under the influence of his prescription psychotropic medication, the State failed to establish Mr. Taylor understood and willfully violated the rules and conditions of probation.

IV. Because Mr. Taylor had no money to pay probation fees, the State failed to establish a willful failure to pay.

V. Cumulative errors deprived Mr. Taylor of a fair proceeding and a reliable outcome.

Having thoroughly considered Appellant's propositions of error and the entire record before the Court, including the original record, transcripts, and briefs of the parties, the Court **FINDS** that neither reversal nor modification of the revocation is warranted, but that the District Court should be instructed to enter a proper journal entry of its order of revocation as hereinafter set forth.

In Proposition I, Appellant correctly asserts that the journal entry of the District Court's revocation order (titled "Judgment and Sentence on Motion to Revoke Suspended Sentence") contains language indicating that new sentences are being entered, and that if construed as imposing a new sentence, will result

in unlawfully extending Appellant's probation and sentence. A journal entry partially revoking a suspended sentence should employ language consistent with that which has occurred in the revocation process.

In *Hemphill v. State*, 1998 OK CR 7, 954 P.2d 148, the Court described the mechanism that lies behind a partial revocation of a suspended sentence. The Court explained, "[W]hen a defendant is sentenced he receives only one sentence, not multiple ones," and should a suspension order be entered, that "suspension order is not a separate sentence but is instead a condition placed upon the execution of the sentence." *Id.*, 1998 OK CR 7, ¶ 6, 954 P.2d at 150. Thus, when a trial court orders the partial revocation of a suspended sentence, it "is merely taking away a portion of the suspended term." *Id.* The resulting consequence of that "taking away a portion of the suspended term" is the execution of the corresponding penalty in the judgment and sentence that, up until revocation, was held in suspension by the conditional orders entered at the time of sentencing. *See Grimes v. State*, 2011 OK CR 16, ¶ 13, 251 P.3d 749, 754 ("The consequence of judicial revocation is to execute a penalty previously imposed in a judgment and sentence."). Accordingly, the District Court's journal entry indicating that it was imposing a new sentence, rather than executing a portion of a sentence that was imposed previously, was error and should be corrected.

In Propositions II Appellant argues the District Court erred in partially revoking his suspended sentence due to his failure to take his medications as prescribed. As a part of this claim of error, Appellant notes that the probation requirement that he "stay on current medications" (O.R. 55) was not part of the District Court's orally pronounced conditions of probation, but that it was instead a provision added to the Judgment and Sentence document. The oral

pronouncement was, "So whatever your treatment regimen is through your psychiatrist or other mental health professional, you need to and must continue that." (O.R. 47.) Because of this variance, Appellant concludes that the probation requirement of "stay on current medications" is not a legitimate condition of probation.

Additionally, it is Appellant's contention that a provision requiring a defendant to consume antipsychotic medications as a condition of probation is unconstitutional "absent a finding of overriding justification and a determination of medical appropriateness." (Appellant's Br. 18.) Appellant therefore not only asks for reversal of the revocation order but for an order removing the "stay on current medications" provision or an order barring its enforcement. (Appellant's Br. 21.)

This portion of Appellant's Proposition II falls short of establishing that a probation requirement of "stay on current medications" is a probation condition void and unenforceable under any circumstances. Short of such proof, Appellant's complaints under the facts presented challenging the constitutionality and legitimacy of such a sentencing order under the facts of his case, and challenging the order's continued viability due to changes in Appellant's mental health since his placement on probation, are all matters that lie outside the scope of Appellant's revocation appeal. See Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011) (declaring that "the scope of review" in an appeal of an order revoking suspended sentence "is limited to the validity of the revocation order," and that "validity of the predicate conviction can only be appealed through a separate appeal pursuant to the regular felony and misdemeanor [appeal] procedures").

The remaining portion of Appellant's Proposition II contends it was an abuse of discretion for the District Court to revoke Appellant for failing to take his medications where there was evidence that Appellant's continued consumption of the medications was worsening his condition and evidence that those medications were no longer required for his mental health. Similarly, Proposition IV advances an abuse-of-discretion argument, claiming that because evidence indicated that Appellant was without adequate means to pay his costs and probation fees, it was an abuse of discretion for the District Court to revoke a portion of his suspended sentence for any failure to pay.

The Court finds that the remaining probation violations proven by the evidence before the District Court are alone sufficient to support the District Court's partial order of revocation. *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d 744, 745 ("Revocation is proper even if only one violation is shown by a preponderance of the evidence."). Consequently, any possible error from the District Court finding violations for nonpayment and noncompliance with prescription regimens was harmless.

Appellant's complaint under Proposition III is that there was insufficient evidence demonstrating Appellant understood his conditions of probation and insufficient evidence demonstrating that any violations of those conditions were not excusable. In this regard, Appellant contends, "The forced psychiatric medication, and withdrawal from the same, left Mr. Taylor unable to strictly comply with the rules of probation" (Appellant's Br. 24), and that "[u]nclear and uncertain instruction on the probation requirements compounded Mr. Taylor's struggle to comply" (Appellant's Br. 27). The Court has reviewed the record in Appellant's matter, and it finds the District Court had evidence before it sufficient for it to conclude, as the trier of fact, that Appellant adequately

understood his probation requirements, had the physical and mental capabilities to comply with those requirements, but deliberately chose not to comply. See *Sneed v. State*, 1975 OK CR 66, ¶ 11, 534 P.2d 1321, 1324 (“This Court will not sit in judgment of a trial court’s determination of fact at a revocation hearing unless there is a clear abuse of discretion or the trial court’s determination is clearly against the weight of evidence.”) Proposition III therefore fails to reveal error in the decision to revoke.

The cumulative error claim raised in Appellant’s final proposition of error (Proposition V) is also without merit.

The cumulative error doctrine applies when several errors occurred at the trial court level, but none alone warrants reversal. Although each error standing alone may be of insufficient gravity to warrant reversal, the combined effect of an accumulation of errors may require a new trial. Cumulative error, however, does not deprive the defendant of a fair trial when the errors considered together do not affect the outcome of the proceeding.

*Hanson v. State*, 2009 OK CR 13, ¶ 55, 206 P.3d 1020, 1035 (citations omitted).

In Appellant’s matter, the potential errors raised in Proposition II and IV were found together to be insufficient to require reversal due to all the remaining probation violations sufficiently proven. As for the error found under Proposition I, the relief accorded below has adequately remedied that circumstance. Additionally, the Proposition I error is one occurring after Appellant’s revocation hearing and the trial court’s decision as to punishment. It therefore is not an error that affected the fairness of those proceedings. The error is simply not of the type that is subject to a cumulative error claim. As no other viable errors have been shown, there is no cumulative error warranting reversal or modification.

**DECISION**

The final order of the District Court of Custer County revoking three (3) years of the order suspending execution of the sentence of imprisonment on Count 1 in Case No. CF-2008-338 is **AFFIRMED**; PROVIDED HOWEVER, the District Court is instructed to enter a proper journal entry consistent with this Summary Opinion that correctly reflects its partial revocation of the suspension order and its order of execution of three (3) years of that term of imprisonment previously imposed by it on Count 1 on January 20, 2010. Pursuant to Rule 3.15 of this Court's *Rules*, the **MANDATE** is **ORDERED** issued on the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY  
THE HONORABLE DONNA L. DIRICKSON, SPECIAL JUDGE**

**APPEARANCES AT TRIAL**

RYAN DON RECKER  
701 EAST MAIN, SUITE D  
P.O. BOX 888  
WEATHERFORD, OKLAHOMA 73096  
ATTORNEY FOR DEFENDANT

ANGELA C. MARSEE  
ASSISTANT DISTRICT ATTORNEY  
P.O. BOX 36  
ARAPAHO, OKLAHOMA 73620  
ATTORNEY FOR STATE OF OKLAHOMA

**OPINION BY: LUMPKIN, J.**  
A. JOHNSON, P.J.: CONCUR  
LEWIS, V.P.J.: CONCUR  
C. JOHNSON, J.: CONCUR  
SMITH, J.: CONCUR

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**APPEARANCES ON APPEAL**

KIMBERLY D. HEINZE  
OKLA. INDIGENT DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OKLAHOMA 73070  
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA  
LORI S. CARTER  
ASSISTANT ATTORNEY GENERAL  
313 NORTHEAST 21ST STREET  
OKLAHOMA CITY, OKLAHOMA 73105  
ATTORNEYS FOR APPELLEE