

and the Court should reverse or modify the revocation order, pursuant to its statutory authority, if the revocation is affirmed.

After thoroughly considering Appellant's propositions of error and the entire record before the Court, including the original record, transcript, and briefs, the Court **FINDS** that that the order of revocation should be modified as hereinafter set forth.

The evidence presented at the evidentiary hearing is minimally sufficient to support the District Court's conclusion that Appellant committed the offense of Domestic Abuse.¹ The evidence also reveals a technical violation of the complainant's protective order; however, the evidence discloses that such violation resulted from Appellant attempting to exercise scheduled, court-ordered visitation privileges with his infant son. Moreover, the evidence showed Appellant's contact with complainant was unplanned, very brief, and was terminated at Appellant's own volition once it became apparent to him that complainant was not going to comply with the court's visitation order. Considering these unique circumstances, this incident was insufficient to merit any significant punishment through revocation. Nevertheless, the District Court gave it considerable weight in determining the revocation order; thus, the Court believes the revocation order should be modified.

IT IS THEREFORE THE ORDER OF THIS COURT that the November 21, 2005, revocation order of the District Court of Oklahoma County, in Case No. CF-1996-1282, is hereby **MODIFIED** to revoke one (1) year of the order suspending execution of sentence. Appellant shall be given credit for all time

¹ Prior to the revocation hearing, a jury acquitted Appellant upon this Domestic Abuse charge; however, due to the different burden of proof in criminal prosecutions, the result of the jury trial was not controlling in the revocation proceeding. See *Moore v. State*, 1982 OK CR 60, ¶¶ 4-6, 644 P.2d 1079, 1080-81 (concluding that revocation of a suspended sentence could still be had upon a preponderance of the evidence that probationer committed a new offense despite circumstance that the probationer was acquitted in a criminal prosecution for that offense).

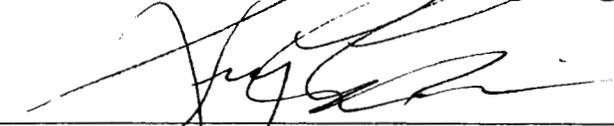
served under the District Court's revocation order. Upon discharging the revoked one-year period, Petitioner shall be returned to probation for the remainder of his sentence and remain subject to further revocation for any other violations of the terms of the District Court's suspension order. Upon receipt of mandate, the District Court shall enter such orders as are necessary to notify the Oklahoma Department of Corrections of this modification of revocation. As modified, the revocation order is in all other respects **AF-FIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2006), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 14th day of January, 2007.



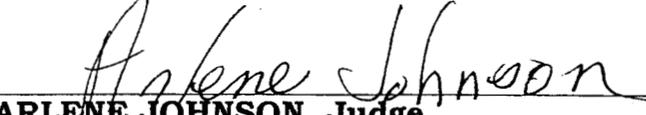
CHARLES S. CHAPEL, Presiding Judge



GARY L. LUMPKIN, Vice Presiding Judge

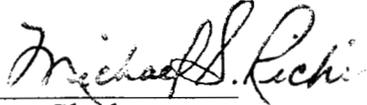


CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge

ATTEST:



Clerk

RA

NOT PARTICIPATING

DAVID B. LEWIS, Judge