

SEP 24 2009

MICHAEL S. RICHIE
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RICHARD LLOYD VANMETER,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. F-2008-963

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 24 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

In the District Court of Tulsa County, Case No. CF-2007-2699, Richard Lloyd VanMeter, Appellant, while represented by counsel, entered a plea of guilty to Driving Under the Influence of Intoxicating Liquor—Second Offense and Operating a Motor Vehicle with Taxes Due the State. On June 27, 2007, pursuant to a plea agreement, the Honorable Sarah D. Smith, Special Judge, delayed sentencing and admitted Appellant to the Tulsa County DUI/Drug Court Program.

Approximately seven months after admission to that program, Appellant was charged in CM-2008-485 with having committed six new offenses: Count 1: Eluding a Police Officer; Count 2: Driving With License Cancelled/Suspended/Revoked; Count 3, Obstructing an Officer; Count 4, Failure to Carry Insurance/Security Verification Form; Count 5, Failure to Pay Taxes Due State; and Count 6, Improper Muffler. Due to these new offenses, the State, on February 15, 2008, filed a "Motion to Revoke Defendant's Participation in Drug/DUI Court." On February 29, 2008, Appellant confessed that Motion and pled guilty to the six new charges in CM-2008-485. Thereupon, pursuant to the agreement of the parties, Judge Smith returned Appellant to the Tulsa

County DUI/Drug Court Program under a document titled "Amended Exhibit A—Tulsa County DUI/Drug Court Program." This "Amended Exhibit A," signed by Appellant and the State's attorney, set out the alternative final dispositions for all of Appellant's charges in both pending District Court cases, those alternative dispositions being dependent upon Appellant success or failure in completing the DUI/Drug Court Program. Judge Smith's court minutes in both cases set sentencing off for one year to February of 2009 to allow Appellant time to complete this program; however, Judge Smith set both matters for review in March of 2008.

Beginning in March of 2008, docket entries in Appellant's cases show his matters being continued from month to month until an entry on August 8, 2008, in CF-2007-2699, when Judge Smith issues a "bench warrant for failure to comply with Drug Court requirements." A September 12, 2008, docket entry in that same case states that Appellant is in custody and that the "service of written motion [is] passed to 10-03-08." Appellant's matter then came on for hearing on October 3, 2008, and except for the Motion to Revoke filed on February 15, 2008, there is no record of any other motion to terminate having been filed or served on Appellant. Nevertheless, Judge Smith terminated Appellant from the DUI/Drug Court Program in both case numbers. In doing so, Judge Smith pronounced sentence in both cases in accordance with that portion of the "Amended Exhibit A" delineating what sentences were to be imposed should Appellant fail to complete the DUI/Drug Court Program.¹

¹ In CF-2007-2699, Judge Smith sentenced Appellant on Count 1 to two (2) years imprisonment and a \$500.00 fine. On Count 2, sentence was for a fine of \$10.00. In CM-2008-485, Judge Smith dismissed Count 3 and imposed sentence on the remaining counts as follows:

- Count 1, one (1) year in the Tulsa County Jail and a fine of \$250.00.
- Count 2, six (6) months in the Tulsa County Jail.
- Count 4, a fine of \$10.00.
- Count 5, a fine of \$10.00.

Appellant now appeals the final orders of termination.² Appellant raises a single proposition of error on appeal:

The District Court's order terminating Appellant's participation in Drug Court constituted an abuse of discretion.

Having thoroughly considering Appellant's proposition of error and the entire record before the Court, including the original record, transcripts, and briefs of the parties, the Court **FINDS** reversal is required.

Under Appellant's proposition of error, he argues, among other things, that he was denied due process by lack of any new motion alleging a subsequent violation of his DUI/Drug Court requirements after his having been returned to the DUI/Drug Court under the agreement reflected in the "Amended Exhibit A." The Court finds merit to this claim.

The only motion asking for termination was that which the State filed on February 15, 2008, in CF-2007-2699. That motion, however, was confessed and adjudicated at the February 29, 2008, hearing with a disposition that returned Appellant to the Tulsa County DUI/Drug Court Program on his charges in that case as well as admitting him to the program on the new offenses to which he pled guilty in CM-2008-485. Having been readmitted to the DUI/Drug Court Program under the February 29, 2008, plea agreement approved by the Drug Court Judge, termination from that program required

Count 6, a fine of \$10.00.

In entering these sentences, Judge Smith ordered that the terms imposed on Count 1 in CF-2007-2699 and on Counts 1 and 2 in CM-2008-485 were to be served concurrently with one another.

² Appellant appealed the termination order entered in CF-2007-2699 in Appellate Case No. F-2008-963 and appealed his termination in CM-2008-485 in Appellate Case No. M-2008-964. On March 26, 2009, on the motion of Appellant, this Court consolidated these appeals into the lower appellate case number.

the filing of a new written notice setting forth any grounds for termination arising subsequent to February 29th.³

While the trial judge may have intended something different when setting review hearings and continuing them following Appellant's confession of the Motion to Revoke and the readmission of Appellant to the DUI/Drug Court Program, that intent is not reflected in the appeal record. This Court is bound by the record it receives from the trial court.

DECISION

The final orders terminating Appellant, Richard Lloyd VanMeter, from the DUI/Drug Court Program in Tulsa County District Court, Case Nos. CF-2007-2699 and CM-2008-485, are **REVERSED** and his convictions in those cases **VACATED WITH INSTRUCTIONS** to reinstate Appellant to the Tulsa County DUI/Drug Court Program under the conditions of the plea agreement executed on February 29, 2008. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2009), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY BEFORE THE HONORABLE SARAH D. SMITH, SPECIAL JUDGE

³ In *Hagar v. State*, 1999 OK CR 35, ¶ 14, 990 P.2d 894, 898-99, this Court found that the State must file an application asking for termination, and that "[i]n order to meet the requirements of due process, the written notice must set forth the reasons for termination with such clarity that the defense is able to determine what reason is being submitted as grounds for revocation/termination, enabling preparation of a defense to the allegation," and "omission of such a notice violates the statute and the requirements of due process."

Additionally, *Hagar* states, "In order to meet the requirements of due process, the judge shall state on the record the reasons for the revocation/termination. This is to include the conditions violated and reasons why disciplinary sanctions have been insufficient or are not appropriate." *Id.*, ¶ 15, 990 P.2d at 899 (citation omitted). In Appellant's matter, there is no transcript of the October 3, 2008, termination hearing or any journal entry of Judge Smith's termination findings in the appeal record. Consequently, Appellant's termination appears to be lacking these due process requirements as well.

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**OPINION BY: LUMPKIN, J.
C. Johnson, P.J.: CONCUR
A. Johnson, V.P.J.: CONCUR
Chapel, J.: CONCUR
Lewis, J.: CONCUR**

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