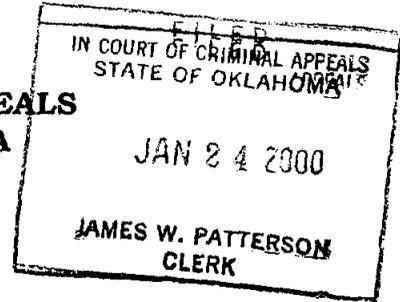


IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA



ROY ALVIN VANN,)
)
 Appellant,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-99-496

ACCELERATED DOCKET ORDER

On October 16, 1979, Appellant, represented by counsel, entered guilty pleas in Case No. CRF-79-213 to the charge of Lewd Molestation and Case No. CRF-79-343 to Bail Jumping, in the District Court of Muskogee County. Appellant received a five (5) year suspended sentence in Case No. CRF-79-213 and a deferred sentence in Case No. CRF-79-343. On January 4, 1980, the State filed an application to revoke Appellant's suspended sentence and accelerate his deferred sentence. After a hearing on March 29, 1999, Appellant's suspended sentence was revoked in full and his deferred sentence was accelerated, whereupon he was sentenced to two (2) years. From these Judgments and Sentences, Appellant appeals.

On appeal Appellant raised three propositions of error:

1. The order revoking Mr. Vann's suspended and deferred sentences should be vacated because the State failed to prosecute its motion to revoke and accelerate in a timely fashion;

2. This case should be remanded to the District Court with instructions to allow Appellant an opportunity to request that he be allowed to withdraw his plea of guilty and to hold a hearing on such request; and
3. If this Court does not reverse Appellant's cases under Propositions I and II, the District Court's acceleration of Appellant's deferred sentence in CRF-79-343 to more than the maximum sentence allowed under the law was per se excessive and should be modified.

Pursuant to Rule 11.2(A)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (1999) this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions or issues were presented to this Court in oral argument January 13, 1999, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

The decision of a trial court to revoke a suspended sentence in whole or in part lies within the discretion of the trial court, and that decision will not be disturbed absent an abuse of discretion. *Harris v. State*, 1989 OK CR 10, ¶ 3, 772 P.2d 1329, 1331; *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453. However, in this case, the State effectively abandoned its application to revoke Appellant's suspended sentence by failing to exercise due diligence in prosecuting its application to revoke. *Cheadle v. State*, 1988 OK CR 226, 762 P.2d 995; *Avance v. Mills*, 1972 OK CR 89, 495 P.2d 828. The same analysis applies to the State's failure to diligently prosecute the acceleration of Appellant's deferred sentence.

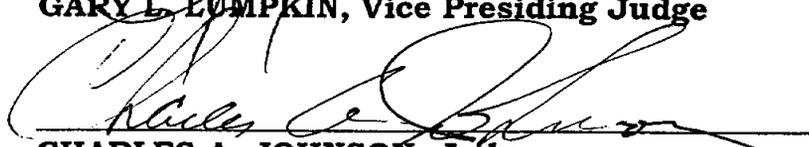
IT IS THEREFORE THE ORDER OF THIS COURT, by a three (3) to one (1) vote, that the order of the District Court of Muskogee County revoking Appellant's suspended sentence in Case No. CRF-79-213 and accelerating Appellant's deferred sentence in Case No. CRF-79-343, is **REVERSED** and **REMANDED** with instructions to dismiss.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th day of January, 2000.



GARY L. LUMPKIN, Vice Presiding Judge



CHARLES A. JOHNSON, Judge



CHARLES S. CHAPEL, Judge



STEVE LILE, Judge

ATTEST:



Clerk