

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JASON DEAN VANSICKLE,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2010-304

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
DEC - 1 2011

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

C. JOHNSON, JUDGE:

Jason Dean Vansickle, Appellant, while represented by counsel, entered pleas of guilty two counts of Knowingly Concealing Stolen Property in Choctaw County District Court, Case No. CF-2008-98. The Honorable Gary L. Brock, Special Judge, on August 25, 2008, pursuant to a plea agreement, deferred Appellant's sentencing for five (5) years conditioned on written terms of probation. Thereafter, the State filed a motion to accelerate the deferred sentencing. On July 6, 2009, Judge Brock sustained that motion, pronounced judgments of guilt against Appellant, and imposed terms of imprisonment of four (4) years on each count "in the care, custody and control of the Department of Corrections." ("Order Accelerating Deferred Sentence" at O.R. 59.) Judge Brock ordered those terms to be served concurrently with one another but conditionally suspended their execution on written rules of probation.

On December 2, 2009, the State filed a motion to revoke Appellant's suspended sentences. That motion alleged that Appellant had violated his probation by testing positive in drug tests for methamphetamine and marijuana and by failing to pay his probation fees. Following an evidentiary hearing on the State's motion to revoke, Judge Brock, on March 24, 2010, found Appellant

violated his probation as alleged and pronounced that the District Court would “revoke one year of [Appellant’s] sentence to be served in the Choctaw County Jail, calendar year.” (Tr. 41.) After making this pronouncement, Judge Brock addressed Appellant by adding:

However, if while you are incarcerated you can get yourself checked into a rehab of one year or more and complete it, that will serve as your incarceration.

If you complete that, or if you do the *one calendar year*, I am releasing you from supervision from DOC.

That’s the judgment and sentence. You will be sentenced to serve one year, *calendar year*, in the county jail.

(Tr. 41) (emphasis added). The journal entry memorializing the revocation proceedings states: “IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that 1 *calendar year* of the defendant’s sentence is hereby revoked and that the defendant is hereby sentenced to the care, custody and control of the Choctaw County Jail” (“Order Revoking Suspended Sentence” at O.R. 86) (emphasis added).

Appellant now appeals the foregoing final order partially revoking his suspended sentences and raises one proposition of error:

Proposition

The trial court lacked authority to impose a sentence to be served day-for-day.

In advancing this proposition of error, Appellant construes the “calendar year” references that the District Court made part of its revocation order as being a directive that Appellant serve the revoked one-year period “at a day-for-day rate.” (Appellant’s Br. 5.) From this, Appellant derives his sole complaint

on appeal urging that such a directive exceeds the District Court's revocation authority. The Court finds merit to Appellant's claim.

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.")

In Appellant's matter, Judge Brock revoked a one-year portion of his previously entered order conditionally suspending execution of the two concurrent four-year terms of imprisonment that were imposed against Appellant at his July 6, 2009, sentencing. The legal effect of that partial revocation order was to execute one year portions of the four-year, concurrent terms of imprisonment imposed on July 6, 2009, and in the execution of that one-year period, to carry out the sentence as described in the sentencing document that memorialized the July 6, 2009, sentencing. As previously noted, the "Order Accelerating Deferred Sentence," the sentencing document presented in Appellant's matter, imposed a term of imprisonment of four (4)

years on each count “in the care, custody and control of the Department of Corrections.”

Rather than simply order the execution of a one-year portion of that punishment for which execution had been suspended at the July 6, 2009, sentencing, the District Court embellished that punishment by adding the “calendar year” requirement to its partial revocation order. Because this exceeds the trial court’s authority in the context of revocation proceedings, that portion of the partial revocation order must be vacated.¹ Additionally, to the extent that the “calendar year” requirement is a directive to the county jail as to how it must administer the executed portion of Appellant’s sentences, it would be an order going beyond the trial court’s judicial authority. *See Fields v. Driesel*, 1997 OK CR 33, ¶¶ 29-35, 941 P.2d 1000, 1006-07 (recognizing that the administering of the service of sentences is a matter that generally lies within the authority of the executive branch of government in accordance with legislative enactments and not a matter within the judiciary’s function).

DECISION

The final order pronounced on March 24, 2010, in the District Court of Choctaw County, revoking concurrent one-year portions of the suspended sentences imposed against Appellant, Jason Dean Vansickle, in Case No. CF-2008-98, is hereby **MODIFIED** to vacate that portion of the final order prohibiting discharge of the executed portion of sentence in less than a full calendar year, but as so modified, the final order is otherwise **AFFIRMED**.

¹ Appellant does not complain about any other aspect of the District Court’s revocation order other than what Appellant has described as its “day-for-day” requirement arising from that order’s “calendar year” language. This Court therefore does not address the lawfulness of any remaining portions of the District Court’s revocation order or the propriety of punishment being executed in custody of the county jail as opposed to the Department of Corrections as decreed at Appellant’s July 6, 2009, sentencing.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CHOCTAW COUNTY
THE HONORABLE GARY L. BROCK, SPECIAL JUDGE

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

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