

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

**CHIEF ALLEN WESTON,**

**Appellant,**

**v.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

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**NOT FOR PUBLICATION**

**No. RE 2013-0850**

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**  
**AUG 11 2014**

**SUMMARY OPINION**

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

**LUMPKIN, JUDGE:**

Appellant, Chief Allen Weston, pled guilty on February 16, 2011, in Ottawa County District Court Case No. CF-2011-27 to Domestic Assault and Battery by Choking. He was sentenced to three years imprisonment to be served in the custody of the Department of Corrections, all suspended with rules and conditions of probation, except for ninety days to be served in the Ottawa County Jail, and with credit for time served from January 23, 2011. He was also fined \$500.00.

The State filed a motion to revoke Appellant's suspended sentence on December 9, 2011, alleging Appellant (1) was in arrears in paying fines and costs; (2) failed to show up for court as ordered; and (3) failed to provide proof of attendance at the required program and was terminated from the program for nonattendance. A revocation hearing was held on August 23, 2013, before the Honorable William Culver, Special Judge. Appellant stipulated to the State's allegations in the motion to revoke. Judge Culver found Appellant had violated the rules and conditions of probation as alleged and revoked

Appellant's suspended sentence in full with credit from June 1, 2013. Appellant appeals from the revocation of his suspended sentence.

Appellant's sole proposition of error on appeal is that his original sentence was impermissibly extended by the Judgment and Sentence on the motion to revoke the suspended sentence because the Judgment and Sentence omitted credit for the ninety days previously served. The State agrees that Appellant is entitled to credit for the time he served in the County Jail during his probationary period. The State answers that because the maximum sentence of incarceration that could be imposed for Appellant's crime was limited to three years, 21 O.S.Supp.2010, § 644(I), that the legal impact of not crediting Appellant with the three months served in the county jail pursuant to the conditions of his suspended sentence was to impose a penalty exceeding that which the Legislature had annexed to the crime. We agree. *See Hemphill v. State*, 1988 OK CR 7, ¶ 9, 954 P.2d 148.

### **DECISION**

The revocation of Appellant's suspended sentence in Ottawa County District Court Case No. CF-2011-27 is **AFFIRMED but the matter is REMANDED to the District Court with instructions to modify the sentence to give credit for the ninety days served during the period of the suspended sentence.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**REVOCATION APPEAL FROM THE DISTRICT COURT OF OTTAWA  
COUNTY, THE HONORABLE WILLIAM CULVER, SPECIAL JUDGE**

**APPEARANCES AT REVOCATION  
PROCEEDING**

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

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