

AUG 22 2003

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

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

EARNEST WILLIAMS,	)	
	)	
Appellant,	)	
	)	
v.	)	No. RE 2002-1124
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

**SUMMARY OPINION**

On January 27, 2000, Appellant pled guilty in the District Court of Muskogee County to the following: Case No. CF-YO-1995-15 to Robbery with Firearms and was sentenced to ten years with all except the first two years suspended; Case No. CF-YO-1999-17 to Robbery by Force and Fear and was sentenced to ten years with all except the first two years suspended; Case No. CF-2000-100, Count 1 – Attempted Robbery by Force and Fear and Count 2 – Aggravated Assault and Battery and was sentenced to ten years with all except the first three years suspended on Count 1 and one year on Count 2; and, Case No. CF-2000-101 to Burglary Second Degree and was sentenced to two years. The sentences were ordered to be served concurrently.

The State filed an Application to Revoke Suspended Sentences on June 21, 2002. Following a hearing August 29, 2002, Appellant's suspended sentences were revoked in full. Appellant appeals from the revocation of his suspended sentences.

On appeal Appellant raised the following propositions of error:

1. The revocation orders must be vacated because the trial court revoked Mr. Williams' suspended sentences on less than competent evidence of the violation alleged in the application to revoke.
2. The District Court's revocation of Mr. Williams' entire suspended sentence in each case was excessive and should be favorably modified.
3. The trial court lacked jurisdiction to revoke Appellant's expired sentence in CF-2000-101 which was never suspended or subject to revocation.

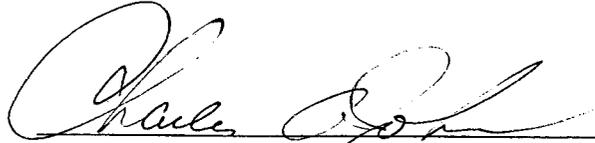
The prosecution, at a revocation hearing, need only show by a preponderance of the evidence that the terms of the accused's suspension have been violated. *See Fleming v. State*, 1988 OK CR 162, ¶ 4, 760 P.2d 206. In this case there is sufficient evidence to support the trial judge's decision to revoke Appellant's suspended sentences. And, finding the revocation in full of Appellant's suspended sentences is not so excessive as to shock the conscience of the Court, we decline to modify Appellant's sentences. *See Middaugh v. State*, 1988 OK CR 295, ¶¶20-21, 767 P.2d 432. However, as to District Court Case No. CF-2000-101, the State agrees with Appellant's proposition that the trial court lacked jurisdiction to revoke the sentence which had expired and which was never suspended or subject to revocation.

**IT IS THEREFORE THE ORDER OF THIS COURT**, that the revocation of Appellant's suspended sentences in District Court Case Nos. CF-YO-1999-15, CF-YO-1999-17 and CF-2000-100 are **AFFIRMED** and the order of the District Court revoking suspended sentence in District Court Case No. CF-2000-101 is **VACATED**.

**IT IS SO ORDERED.**

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 23<sup>rd</sup> day

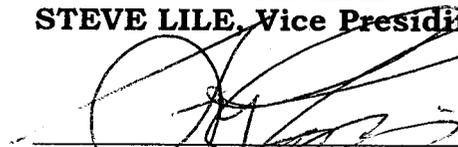
of August, 2003.



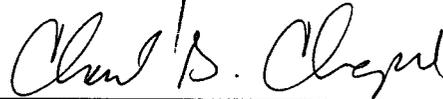
**CHARLES A. JOHNSON, Presiding Judge**



**STEVE LILE, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**



**CHARLES S. CHAPEL, Judge**



**RETA M. STRUBHAR, Judge**

ATTEST:



Clerk