

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RONNIE EUGENE WOODS,
Appellant,

-vs.-

THE STATE OF OKLAHOMA,
Appellee.

NOT FOR PUBLICATION

No. RE-2014-1030

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 23 2016

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

LEWIS, JUDGE:

In the District Court of Okmulgee County, Case No. CF-2011-161, Ronnie Eugene Woods, Appellant, while represented by counsel, entered pleas of guilty to Count 1: Unlawful Possession of a Controlled Dangerous Drug with Intent to Distribute; Count 2: Falsely Personate Another to Create Liability; and Count 3: Driving with License Cancelled, Suspended, or Revoked. There being no plea agreement, the Honorable Kenneth E. Adair, District Judge, ordered a presentencing investigation and set Appellant's matter for sentencing. On January 25, 2012, after receiving a presentencing report, Judge Adair sentenced Appellant as follows: Count 1: \$10,000.00 fine and five (5) years imprisonment; Count 2: \$5,000.00 fine and five (5) years imprisonment; and Count 3: one (1) year confinement. Judge Adair further ordered that the execution of all but \$1,000.00 of Appellant's fines and all but the first one (1) year of his terms of imprisonment would be suspended. Judge Adair conditioned this suspension order on written terms of probation. Lastly, Judge Adair ordered Appellant's sentences on each count were to be served concurrently with one another, but in doing so, he stated, "The Court reserves the right to run consecutive time on a revocation."

On June 2, 2014, the State filed a motion asking for revocation of Appellant's suspended sentences. This motion alleged Appellant had violated his probation by failing to report, failing to pay supervision fees, and failing to maintain gainful employment and provide proof of employment. Appellant stipulated to these allegations, with the decision as to punishment being continued for several months to allow additional time for Appellant to comply with the ongoing terms of his probation. Appellant, however, did not appear at the scheduled punishment hearing, which resulted in a warrant being issued for Appellant's arrest.

Once custody of Appellant was regained, the revocation proceedings resumed with the trial court receiving arguments of counsel and testimony from Appellant. At the conclusion of that hearing, Judge Adair, on November 21, 2014, revoked the suspension order in full, and further ordered Appellant's sentences to be executed consecutively.

Appellant now appeals this final order of revocation, and he raises the following propositions of error:

1. The District Court lacked authority to order the revoked sentences to run consecutively, when the original Judgment and Sentence ordered the suspended sentences to be served concurrently.
2. Mr. Woods' order of revocation is excessive based on the facts and circumstances of this case.

Having thoroughly considering these propositions of error and the entire record before this Court, including the original record, transcript, and briefs of the parties, the Court finds no error warranting reversal of the decision to revoke, but under Proposition I, the Court does find error requiring modification of the District Court's revocation order.

Appellant's Proposition I argues that the portion of the District Court's revocation order that directs that his sentences be executed consecutively rather than concurrently is unlawful, as it is an order that goes beyond the authority of the District Court to enter in a revocation proceeding. We agree.

A trial court's discretionary authority to suspend the execution of a sentence, in whole or in part and as a matter of grace, is a power that is controlled by statute.¹ Similarly, a trial court's discretionary authority to accord a defendant grace by ordering concurrent sentences is statutory and arises from 22 O.S.2011, § 976.² Under Section 976, the Legislature has given a judge, when imposing sentence, the discretionary authority to make that sentence concurrent with any other existing sentence.³ Nothing within Section 976, however, states that a sentencing judge can later rescind a concurrent sentencing order, make a concurrent sentencing order conditional, or split up a

¹ See *Demry v. State*, 1999 OK CR 31, ¶ 12, 986 P.2d 1145, 1147 ("A suspended sentence is a matter of grace."); *Davis v. State*, 1993 OK CR 3, ¶ 10, 845 P.2d 194 (because the statute authorizing district courts to suspend the execution of sentences "restricts the sentencing options of the trial court and precludes the trial court from suspending the execution of sentence for offenders who are being sentenced 'upon their third or subsequent to their third conviction of a felony,'" a district judge "is without authority to suspend a sentence in whole or part if a defendant has previously been convicted of two or more felonies"); *Swart v. State*, 1986 OK CR 92, ¶ 20, 720 P.2d 1265, 1271 ("Certainly, probation is a power created by statute, and may be withheld from certain categories [sic] of crime.").

² In its entirety, Section 976 states:

If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses. Provided, that the sentencing judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

22 O.S.2011, § 976.

³ Prior to a 1985 amendment to Section 976, "a trial court was without authority to run concurrently sentences which were imposed at different times." *Walker v. State*, 1989 OK CR 65, ¶ 3, 780 P.2d 1181, 1182.

sentence to make part of it concurrent and part of it consecutive.⁴ For these reasons, the language in Appellant's Judgment and Sentence that attempts to formulate conditional concurrent sentences cannot stand.

In a revocation proceeding, a trial court is limited to revoking, in whole or in part, its prior order suspending the execution of the penalty that it previously imposed in the judgment and sentence.⁵ Therefore, in the context of adjudicating the Motion to Revoke filed against Appellant, the District Court was limited to executing the concurrent sentences and other valid sentencing provisions that it had partially suspended; and that unlawful portion of Judgment and Sentence attempting to reserve the option for consecutive sentences notwithstanding, the District Court was prohibited from modifying the sentences it had previously pronounced.⁶

Appellant's Proposition II contends that the District Court's revocation decision was excessive under the facts of his case. In addressing that claim, we review for abuse of discretion.⁷ Appellant stipulated to violations of several

⁴ See *Hemphill v. State*, 1998 OK CR 7, ¶ 6, 954 P.2d 148, 150 ("Our state's sentencing statutes contemplate that when a defendant is sentenced he receives only one sentence, not multiple ones. The suspension order is not a separate sentence but is instead a condition placed upon the execution of the sentence.").

⁵ 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."); cf. *Hemphill*, ¶ 6, 954 P.2d at 150 (when a trial court orders partial revocation of a suspended sentence, it "is merely taking away a portion of the suspended term").

⁶ Here we must note one exception to the rule prohibiting modification of an existing sentence on revocation. In *Walker*, the Court found the "at all times" language within Section 976 to be of sufficient breadth to empower a district court with discretionary authority to order a sentence it executes at revocation to be served concurrently with another existing sentence. *Walker*, ¶ 4, 780 P.2d at 1183.

⁷ See *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557 ("[appellant] argues that revocation of the remainder of his suspended sentence was excessive. The standard of review applied to revocation proceedings is abuse of discretion."); *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565 ("The decision of the trial court to revoke a suspended sentence in whole or

rules of probation alleged in the State's Motion to Revoke. This Motion merely identified the rules violated, and it did not set out the details of Appellant's behaviors that had resulted in the violation of those rules. The severity of those individual rule violations is therefore absent, for the most part, from the appeal record, as is evidence that might mitigate those violations. The primary focus of the evidence at the punishment hearing was on events occurring after the admitted violations—evidence about which the District Court expressed doubt as to its credibility. This record simply cannot suffice in demonstrating in relation to Appellant's admitted probation violations that arbitrary or unreasonable action necessary for finding an abuse of discretion.⁸

DECISION

The November 21, 2014, order of the District Court of Okmulgee County, revoking in full its previous order partially suspending execution of sentences in Case No. CF-2011-161, is **REMANDED** to the District Court with instructions to modify its revocation order to properly reflect that the executed sentences are to be served concurrently with one another. As modified, the order of revocation is **AFFIRMED**. The District Court's modification order shall be entered within thirty (30) days of mandate and a copy thereof forwarded to the Oklahoma Department of Corrections. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

in part is within the sound discretion of the trial court and will not be disturbed absent an abuse thereof.”).

⁸ See *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209 (“An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts.”); *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170 (“An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue.”).

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE KENNETH E. ADAIR, DISTRICT JUDGE

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OPINION BY: LEWIS, J.

SMITH, P.J.: Concurs
LUMPKIN, V.P.J.: Concurs
JOHNSON, J.: Concurs in Results
HUDSON, J.: Concurs

RB

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