

allegations. Upon finding that Appellant violated probation, Judge Combs delayed the decision of whether the suspension order should be revoked pending Appellant's entry into a drug treatment program known as Clean-Start.

On September 29, 2005, the parties again appeared upon the revocation matter. At this hearing, Appellant's probation officer reported that on September 25th Appellant tested positive for methamphetamine. Judge Combs elected to revoke the suspension order in full, and in doing so, he entered a journal entry of his revocation order that stated, "Defendant is hereby ordered imprisoned for a term of **FOUR (4) YEARS.**" (O.R. 118) (emphasis in original).

From the District Court's latest revocation order, Appellant now appeals. She raises two propositions of error on appeal:

Proposition I

The District Court's revocation of Appellant's suspended sentence was excessive under the facts of this case and should be reversed or modified.

Proposition II

The trial court had no legal authority to revoke Ms. Wren and sentence her to four years incarceration when she only had three years and eleven months left on her suspended sentence.

After thoroughly considering Appellant's propositions of error and the entire record before the Court, including the original record, transcripts, and briefs, the Court **FINDS** that the revocation order should be modified as hereinafter set forth.

In Proposition I Appellant contends that the trial court abused its discretion in revoking Appellant's suspended sentence in its entirety rather than electing to retain a portion of Appellant's probation for purposes of drug addiction treatment. Appellant's Proposition I is without merit. It was for

methamphetamine possession that Appellant was first placed upon probation. Nevertheless, despite the intervention of a probation period of more than two years, Appellant continued to use methamphetamines. In *Demry v. State*, 1999 OK CR 31, ¶ 21, 986 P.2d 1145, 1149, this Court recognized the seriousness of repeating the very crime for which one had been placed on probation. “[T]he decision to revoke the suspended sentence in whole or in part lies within the discretion of the trial court and absent an abuse thereof the trial court’s decision will not be disturbed.” *Mack v. State*, 1981 OK CR 160, ¶ 3, 637 P.2d 1262, 1264. Because Appellant’s history is sufficient to support revocation in full, the trial court’s decision to do so must be affirmed.

Appellant’s Proposition II asserts that because a thirty-day portion of Appellant’s four-year sentence had been previously executed due to a prior revocation order, the District Court erred in ordering Appellant imprisoned for four years. Appellant’s argument in Proposition II has merit.

When a court revokes a suspended sentence, it does not modify the sentence in any regard other than to simply lift, either in whole or in part, the previously entered suspension order. *See generally Hemphill v. State*, 1998 OK CR 7, ¶ 9, 954 P.2d 148, 151 (a suspended sentence is neither lengthened nor shortened by intervening revocations); *Robertson v. State*, 1977 OK CR 74, ¶ 4, 560 P.2d 1039, 1040 (holding that trial court “was without authority to order additional suspended time past the term of the original judgment and sentence”). A trial court’s authority in revocation proceedings is therefore limited to directing execution of the unexecuted portion of a sentence that has been conditionally suspended under terms of probation.

In Appellant’s matter, by ordering Appellant imprisoned for a term of four (4) years when Appellant had previously served a thirty-day portion of her four-

year sentence, the District Court effectively lengthened Appellant's sentence by an additional month. Because Appellant had served thirty-days of her sentence, there remained no more than three years and three-hundred-and-thirty-five days that were unexecuted and subject to revocation. Accordingly, the District Court's revocation order must be modified as hereinafter set forth.

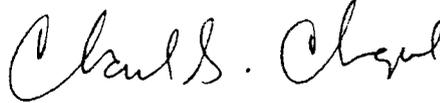
IT IS THEREFORE THE ORDER OF THIS COURT that the September 29, 2005, order of the District Court of Pottawatomie County, which revoked the order suspending execution of sentence in Case No. CF-2002-278, is **AFFIRMED AS MODIFIED** herein. Upon receipt of mandate, the District Court shall enter an Amended Order Revoking Suspended Sentence reflecting modification of its revocation order of September 29, 2005. The Amended Order Revoking Suspended Sentence shall be consistent with this Summary Order and shall (1) make appropriate findings, (2) order revocation of the entire remaining portion of the March 12, 2003, suspension order, and (3) direct the execution of the unserved remaining three years and three-hundred-and-thirty-five days of Appellant's sentence of imprisonment.

IT IS THE FURTHER ORDER OF THIS COURT that within thirty (30) days from receipt of mandate, certified copies of the Amended Order Revoking Suspended Sentence shall be delivered to the Clerk of this Court; to the District Attorney for Pottawatomie County; to Jennifer Miller, Assistant Attorney General; to Danny G. Lohmann, counsel for Appellant; to Jim Rabon, Sentencing Administrator for the Oklahoma Department of Corrections; and to the records officer at Appellant's place of confinement or supervision.

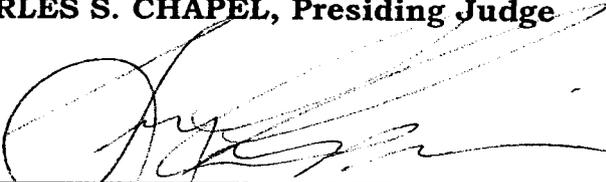
Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2006), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 28th day
of February, 2006.



CHARLES S. CHAPEL, Presiding Judge



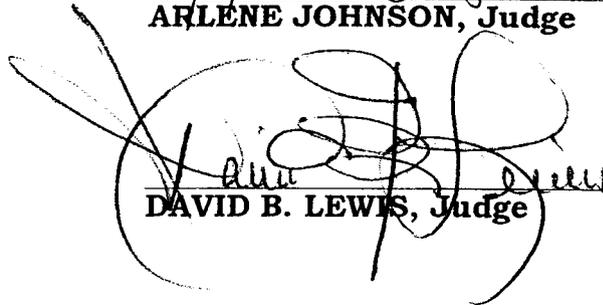
GARY L. LUMPKIN, Vice Presiding Judge



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

RA