

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

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN - 7 2002
JAMES W. PATTERSON
CLERK

ERNIE JOE FIELDS,)
)
Appellant,)
)
vs.)
)
STATE OF OKLAHOMA,)
)
Appellee.)

No. RE-2000-1209

ACCELERATED DOCKET ORDER

On January 24, 1992, Appellant pled guilty to Kidnapping, Rape, Feloniously Pointing a Firearm, and Oral Sodomy in Case No. CF-91-3546 in the District Court of Tulsa County. Appellant was sentenced to 10, 12, 10 and 10 years, respectively, on these counts, all suspended, all sentences to be served concurrently. On April 18, 1994, a permanent protective order was entered against Appellant pursuant to the request of Carolina Fields, in Case No. PO-1994-822 from the District Court of Tulsa County. On February 9, 1995, Appellant's suspended sentences were partially revoked. On October 1, 1997, Appellant was convicted of placing body wastes/fluids on a government employee, Case No. CF-97-926, in the District Court of Tulsa County. Appellant was sentenced to two (2) years, suspended.

On January 26, 1999, the State filed an application to revoke Appellant's suspended sentences in Case No. CF-97-926. An application to revoke Appellant's suspended sentences in Case No. CF-91-3546 was filed March 24, 2000. A hearing was held, and Appellant's suspended sentences in both cases,

on all counts, were revoked in full. From this Judgment and Sentence, Appellant appeals.

On appeal Appellant raised four propositions of error:

1. The trial court erred in sentencing Mr. Fields to nine years on Count two (sic) because the maximum sentence Mr. Fields could be sentenced to was seven years;
2. Insufficient evidence was presented that Mr. Fields violated an emergency protective order issued in 1994, as such an order would have expired prior to 1998, when he allegedly violated the order;
3. Revocation of Mr. Fields' suspended sentences constituted an abuse of discretion because, even if the protective order was in effect, the State did not prove that Mr. Fields' actions violated the terms of the protective order in this case; and
4. Appellant was denied his statutory and constitutional right to due process when the State failed to file an application to revoke Appellant's suspended sentence.

Pursuant to Rule 11.2(A)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2000) this appeal was automatically assigned to the Accelerated Docket of this Court. The propositions or issues were presented to this Court in oral argument December 20, 2001, pursuant to Rule 11.2(F). At the conclusion of oral argument, the parties were advised of the decision of this Court.

The revocation of Appellant's suspended sentences is **AFFIRMED**. There was sufficient evidence presented at the revocation hearing to find Appellant had violated the terms of the protective order, and the trial court did not abuse its discretion in revoking Appellant's suspended sentence. *McCaskey v. State*, 1989

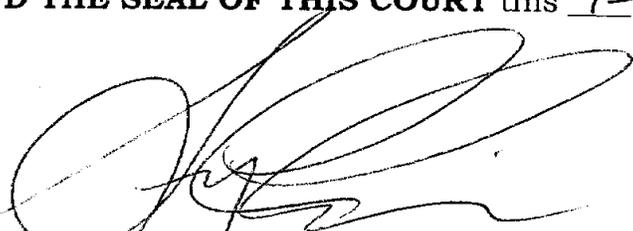
OK CR 63, 781 P.2d 836; *Frick v. State*, 1973 OK CR 172, 509 P.2d 135. However, we find merit in Appellant's claim that he could not have received a nine (9) year sentence on Count I, Case No. CF-91-3546. As admitted by the State in its response to Appellant's Application for Accelerated Docket (Fast Track), the maximum sentence Appellant could receive for Count I, Case No. CF-91-3546 is seven (7) years.

IT IS THEREFORE THE ORDER OF THIS COURT, by a vote of five (5) to zero (0) that the order revoking of Appellant's suspended sentences in Case Nos. CF-91-3546 and CF-97-926 in the District Court of Tulsa County is **AFFIRMED**.

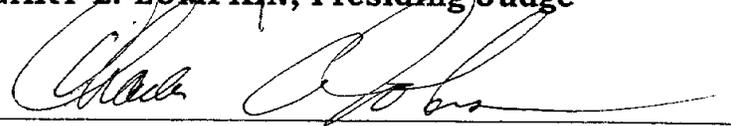
IT IS THE FURTHER ORDER OF THIS COURT that this matter be remanded to the District Court of Tulsa County, the Honorable Tom Gillert, District Judge, for entry of an order *nunc pro tunc* showing that Appellant is sentenced to seven (7) years for his conviction in Case No. CF-91-3546, Count I, Kidnapping instead of nine (9) years as reflected in the court's order entered March 26, 2000.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 7th day of January, 2002.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge

Charles S. Chapel

CHARLES S. CHAPEL, Judge

Reta M. Strubhar

RETA M. STRUBHAR, Judge

Steve Lile

STEVE LILE, Judge

ATTEST:

J. [Signature]
Clerk