

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 14 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WALKER JOHN MYERS,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

No. RE-2000-1429

ACCELERATED DOCKET ORDER

On November 24, 1998, in the District Court of Cotton County, Case No. CM-96-158, Appellant, following pleas of nolo contendere, received sentences of one year in the county jail for Attempting to Elude a Police Officer and one year for Resisting an Officer. The District Court ordered Appellant's sentences be served consecutively and that all but the first thirty days of each sentence be suspended. Thereafter the Honorable Leo A. Watson, Jr., Associate District Judge, found Appellant violated the probationary provisions of the order of suspension. Consequently, on October 18, 2000, Judge Watson entered an order of revocation that commanded Appellant "be remanded to the Cotton County Sheriff's Department to commence serving the balance of his sentence." (O.R. 94.) From this order of revocation, Appellant has perfected this appeal.

The appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2001). Oral argument was held on October 11, 2001 and the Court duly considered each of Appellant's three propositions of error raised upon appeal:

Proposition I

Appellant's sentence must be vacated or modified because the trial court revoked Appellant's sentence on less than competent evidence.

Proposition II

The wording of the trial court's order revoking Appellant's suspended sentence is ambiguous whether it is a partial or whole revocation, thus the order must be clarified.

After hearing oral argument and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of four (4) to zero (0), we affirm the decision to revoke but remand for entry of a more precise order of revocation. In Appellant's Proposition I, he argues revocation was not based upon competent evidence; however, the record reveals Appellant admitted the acts alleged within the revocation application. (O.R. 73.) Upon such admission, the District Court set the matter for further hearing to decide what punishment should be imposed. The hearing on the punishment issue occurred on October 18, 2000, at which time the District Court took further evidence, decided punishment, and pronounced its final order of revocation. Because Appellant had previously stipulated to the violations, it was unnecessary for the State at this hearing to present further evidence of the probation violations. Proposition I is therefore without merit.

The Court finds merit to Appellant's Proposition II. Appellant was on probation for two consecutive one-year jail terms that commenced on November 24, 1998, the date of Appellant's pleas and sentencing. The State did not initiate the latest revocation proceeding until December 14, 1999, when it filed its Application to Revoke suspended sentences. This filing occurred more than a year after Appellant's terms of probation had commenced. Consequently, one of Appellant's suspended sentences had expired before the filing of the Application, thereby causing the District Court to lose authority to revoke such sentence. *Hemphill v. State*, 1998 OK CR 7, ¶ 3, 954 P.2d 148, 149. The District Court's

revocation order does not clearly specify that only one suspended sentence is being revoked.

Additionally, it is observed that Appellant was the subject of a revocation action in CM-96-158 that occurred before the current revocation now on appeal. A September 9, 1999, "Order Revoking Suspended Sentence" reveals that in this previous revocation, the District Court ordered "ninety (90) days of prior sentence be revoked." (O.R. 63.) Thus, it appears three months of the eleven-month suspended portion of Appellant's sentence has been previously revoked, leaving only eight months of Appellant's one remaining sentence unexecuted and subject to further revocation.

Lastly, the court finds the District Court's October 18, 2000, journal entry of its revocation order is ambiguous as to how much of the unexecuted portion of Appellant's one remaining suspended sentence is to be revoked. As previously noted, the District Court's revocation order directs Appellant "to commence serving the balance of his sentence." (O.R. 94.) The phrase "balance of his sentence" could be reasonably construed as meaning: (1) the length of time from October 18, 2000, to November 23, 2000 (November 23rd being the day at the end of which Appellant's term of probation would finally lapse); or (2) the phrase could refer to the entire eight-month jail term that remained unexecuted upon the last of Appellant's two sentences.

In revocation proceedings, we believe the better practice is for the trial court to specify the precise term of imprisonment that is being revoked and executed. This is especially true in cases such as Appellant's where there are: (1) split sentences, (i.e., sentences directing a portion of the term be executed immediately and the remaining portion suspended); (2) more than one suspended sentence; and (3) previous partial revocation orders. Where the revocation order

fails to specify the length of the term being revoked and ordered executed, the sheriff or warden will be left with the task of going beyond the four corners of the revocation order to determine the precise term which the prisoner is to serve.

IT IS THEREFORE THE ORDER OF THIS COURT that the portion of the Cotton County District Court's order of October 18, 2000, finding Appellant's suspended sentence in Case No. CM-96-158 should be revoked, is hereby **AFFIRMED**, provided however, the District Court shall amend nunc pro tunc the journal entry of such order so that it clearly indicates revocation of only one suspended sentence and the precise length of the term revoked and ordered executed.

IT IS SO ORDERED.

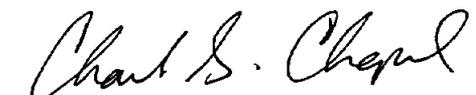
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 14th day of December, 2001.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge

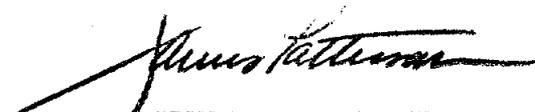


CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:



Clerk
RA