

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

F I L E D
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN 25 2002
JAMES W PATTERSON
CLERK

ROGER DALE FULTZ,
Appellant,

v.

THE STATE OF OKLAHOMA,
Appellee.

No. RE 2001-0351

**ORDER GRANTING APPEAL AND REMANDING MATTER
TO DISTRICT COURT OF BRYAN COUNTY WITH INSTRUCTIONS
TO ENTER AN AMENDED JUDGMENT AND SENTENCE**

On January 14, 2002, the State of Oklahoma, by and through William R. Holmes, Assistant Attorney General, filed "Appellee's Motion To Confess Error" in the above styled appeal from the revocation of Appellant's suspended sentence in the District Court of Bryan County, Case No. CF-2000-316. The statement of the case and facts as set forth in Appellant's Brief are as follows:

On July 20, 1998, [Appellant] was charged by Information in Bryan County District Court Case No. CF-98-301 with Count I - Driving Under the Influence of Intoxicating Liquor in violation of Okla.Stat.tit. 47, §11-902 (1998), and two (2) misdemeanor counts which are not at issue in this appeal. (O.R.I.1-3) On September 10, 1998, [Appellant] entered a no contest plea and received a five (5) year sentence with all but the first year suspended for Count I, and a now successfully discharged one (1) year suspended sentence running concurrently with Count I for the misdemeanor charge in Count II. (O.R.11-23)

On July 25, 2000, [Appellant] was charged by Information in Bryan County District Court Case No. CF-2000-316 with five (5) counts of Uttering a Forged Instrument in violation of Okla.Stat.tit. 21, § 1592 (1991). (O.R.II 1-3) On August 21, 2000, the trial court revoked one (1) year of Appellant's suspended sentence for a subsequent violation of the law which violated Appellant's Rules and Conditions of Probation in CF-

98-301. (O.R.I. 25-26, 31-33) On October 18, 2000, Appellant entered a no contest plea in CF-00-316 to one count of Uttering a Forged Instrument, the other counts were dismissed. (O.R.II, 13, 18-22, 25-29)

When [Appellant] entered his plea to the offense in CF-2000-316 on October 18, 2000, he, the State, and the trial court in that case agreed that he would be sentenced to a term of five (5) years with all but one (1) year suspended, with said term to be served *concurrently* with CF-98-301. (O.R.II 18-22, 25-26) The trial court accepted Appellant's plea and ordered the sentence in CF-00-316 to be served *concurrently* with that in CF-98-301. (O.R.II 22, 26)

On February 20, 2001, the State filed an Application to Revoke in both CF-98-301 and CF-2000-316. (O.R.I.35; O.R.II.30) At the revocation hearing held March 19, 2001, the trial court revoked the balance of [Appellant's] probation in both cases and ordered the sentences in the two cases to run *consecutively* to each other (O.R.I.50, 56-57; O.R.II 33, 51-53; Tr.18-19) Defense counsel objected to the consecutive sentences arguing the trial court lacked authority to withdraw the previous order which ran those two (2) sentences concurrently. (Tr.19) It is from this Judgment and Sentence Upon Revocation, that [Appellant] now appeals.

On appeal, Appellant raises the following proposition of error: "The trial court erred in ordering the revoked sentences to run consecutively, when a previous order suspending sentence ordered the sentences to be served concurrently." On January 14, 2002, the State filed a Motion to Confess Error requesting this Court find in Appellant's favor as to this proposition of error as "[t]he District Court had no authority to order that Appellant's sentences be served consecutively when the original sentences were run concurrently."

Accordingly, Appellee's motion is **GRANTED**. This matter is **REMANDED** to the District Court of Bryan County with **INSTRUCTIONS** to enter an amended Judgment and Sentence in District Court Case No. CF-2000-316 ordering Appellant's revoked sentence be served concurrently, not consecutively, to Case No. CF-1998-301. The Clerk of this Court is directed to transmit a copy of this

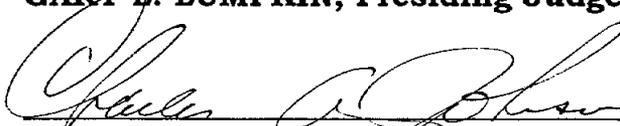
Order to the Honorable Farrell M. Hatch, District Judge, District Court of Bryan County, as well as to counsel of record.

IT IS SO ORDERED.

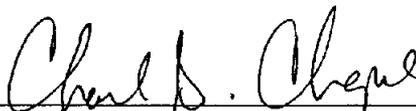
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this ^{25th} day
of January, 2002.

NOT PARTICIPATING

GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

NOT PARTICIPATING

RETA M. STRUBHAR, Judge



STEVE LILE, Judge

ATTEST:


Clerk