

MAY 17 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

STEVEN JAMES CALHOUN,)
)
 Appellant,)
)
 -vs-) No. RE-2004-593
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

**SUMMARY ORDER AFFIRMING REVOCATION OF
SUSPENDED SENTENCE, BUT REMANDING TO
THE DISTRICT COURT TO MODIFY LENGTH OF
THE REVOKED SENTENCE**

The Appellant, Steven James Calhoun, has appealed to this Court from the revocation of the balance of his suspended sentence in Case No. CF-2003-44 in the District Court of Pottawatomie County, before the Honorable Douglas L. Combs, District Judge. In that case, Appellant entered a plea of guilty to Sexual Battery, and was convicted and sentenced to a term of five (5) years, with the sentence suspended under rules and conditions of probation.

On October 6, 2003, the State filed the first application to revoke Appellant's suspended sentence alleging he had violated probation condition number 20D, treatment, by missing 3 groups since 4/28/03; by failing to pay \$140 for group sessions; and by failing to show honesty, effort care, or concern for working with his treatment program. On October 22, 2003, Appellant stipulated to the first application, and Judge Combs revoked sixty (60) days of Appellant's suspended sentence.

On May 17, 2004, the State filed the current motion to revoke Appellant's suspended sentence alleging he had violated probation (1) by failing to register as a sex offender with the State of Oklahoma; and (2) by changing his residence without notifying his probation supervisor. On May 26, 2004, the revocation hearing was conducted before Judge Combs. At the conclusion of the evidence and arguments, Judge Combs found Appellant has violated probation and granted the motion to revoke Appellant's suspended sentence. Judge Combs stated Appellant "will be remanded to the Department of Corrections for a period of five years." The order revoking Appellant's suspended sentence states Appellant is ordered committed to the custody of the Department of Corrections for a term of five (5) years.

In this appeal, Appellant asserts two (2) propositions of error. Appellant first contends the District Court erred in ordering Mr. Calhoun to serve five years in the custody of the Department of Corrections after revoking appellant's suspended sentence in full. Appellant claims that because of the trial court's previous revocation of sixty days, the remaining term of Appellant's suspended sentence was five years less sixty days. The second proposition contends the District Court's revocation of the remainder of Mr. Calhoun's suspended sentence in full was excessive under the facts of this case and should be reversed or favorably modified.

With regard to Appellant's first proposition, the State agrees that sixty (60) days of Appellant's five (5) year suspended sentence has previously been revoked. Therefore, the State acknowledges that the District Court's order revoking

Appellant's five (5) year suspended sentence should be modified to reflect Appellant is remanded to the Department of Corrections for a period of four (4) years and ten (10) months. With regard to Appellant's second proposition, the decision to revoke a 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. *Jones v. State*, 1988 OK CR 20, ¶8, 749 P.2d 563, 565. Appellant has again failed to comply with the rules and conditions of his probation. He has not established that the District Court erred or abused its discretion by revoking the balance of his suspended sentence. Id.


IT IS THEREFORE THE ORDER OF THIS COURT that the order of the District Court of Pottawatomie County revoking the balance of Appellant's suspended sentence in Case No. CF-2003-44 should be, and is hereby, **AFFIRMED**, but **REMANDED** to the District Court to modify the revocation order to reflect Appellant is remanded to the Department of Corrections for a period of four (4) years and ten (10) months.

IT IS SO ORDERED.

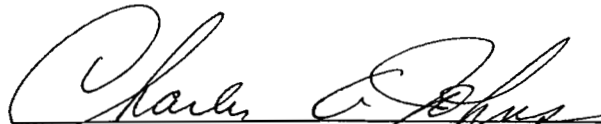
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 17th day
of May, 2005.



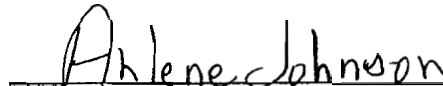
CHARLES S. CHAPEL, Presiding Judge



GARY L. LUMPKIN, Vice Presiding Judge



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge

ATTEST:



Clerk

RB/F

