

MAY 15 2008

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

KEVIN DAVIS,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2007-378

SUMMARY OPINION

A. JOHNSON, JUDGE:

Following a plea of guilty to Possession of a Controlled Dangerous Substance (Marijuana) After Former Conviction, in Oklahoma County District Court, Case No. CF-2000-6302, the Honorable Charles G. Hill, Special Judge, sentenced Appellant, Kevin Davis, on February 12, 2001, to five years imprisonment, with all but the first 150 days suspended. On March 20, 2003, in Case No. CF-2002-6236, the Honorable Virgil C. Black, District Judge, on Davis' plea of guilty to Driving Under the Influence of Intoxicating Liquor After Former Conviction, sentenced him to five years imprisonment, with all but the first year suspended. Judge Black ordered Davis' sentence in CF-2002-6236 to be served concurrently with that imposed in CF-2000-6302.

On December 7, 2006, the State filed an Application to Revoke Suspended Sentence in each of the above cases alleging that Davis violated his probation by committing an attempted robbery as alleged in Oklahoma County District Court Case No. CF-2006-3798. Davis was eventually convicted in that case and sentenced to ten years imprisonment. Based on the evidence presented at the jury trial in CF-2006-3798, the Honorable Tammy Bass LeSure, District Judge, on April 6, 2007, revoked a three-and-a-half year portion of the

suspension orders in both CF-2000-6302 and CF-2002-6236. In doing so, Judge Bass-LeSure declined to allow Davis to serve the terms executed by her revocation orders concurrently with that ten-year sentence she imposed in CF-2006-3798.¹

Davis now appeals, raising the following propositions of error:

1. The trial court abused its discretion in running the revoked sentences consecutive to Mr. Davis' new conviction.
2. The District court was without jurisdiction to revoke Mr. Davis' sentence in CF-2000-6302 as the sentence had expired prior to the filing of the State's Application to Revoke.

1.

Davis claims the trial court, when revoking his suspended sentences, abused its discretion in denying his request for an order that would allow concurrent service of the revoked sentences with the sentence imposed in CF-2006-3798. This Court has construed 22 O.S.2001, § 976 as permitting a trial judge to direct that the sentence executed by a revocation order be served concurrently with any other existing sentence the defendant is serving.² This Court has also held that the decision of a trial judge to order a sentence to run concurrently as provided by Section 976 is a matter within the trial judge's discretion. Absent an abuse of discretion, that decision will not be reversed on appeal.³ We find no abuse of discretion. This claim is denied.

¹ Because Judge Black, when imposing sentence in CF-2002-6236, ordered that sentence to be served concurrently with Davis' sentence in CF-2000-6302, the three-and-a-half year terms revoked by Judge Bass-LeSure in those two cases were required to remain concurrent with one another. Judge Bass-LeSure noted this when entering her revocation orders. (Tr. 8.)

² *Walker v. State*, 1989 OK CR 65, ¶¶ 2-5, 780 P.2d 1181, 1182-83.

³ *Id.*, ¶ 5, 780 P.2d at 1183; accord *Harris v. State*, 1989 OK CR 10, ¶ 4, 772 P.2d 1329, 1330.

2.

Davis claims the District Court was without authority to revoke the suspension order in CF-2000-6302 because its jurisdiction over that case lapsed before the State filed its Application to Revoke. We find there is merit to this claim. In CF-2000-6302, Davis was sentenced on February 12, 2001, to a term of five years imprisonment with credit for time served, with all except the first 150 days of that term suspended under conditions of probation. (O.R. 24-25.) Accordingly, the District Court's continuing jurisdiction over that sentence lapsed at the end of the five-year term, less those days of jail time credited Davis when his sentence was imposed.⁴ The State's Application to Revoke, filed on December 7, 2006, came after that time period expired, and therefore, the District Court had no jurisdiction in the matter.⁵

DECISION

The final order of the District Court of Oklahoma County, revoking a three-and-a-half year portion of the suspended sentence of KEVIN DAVIS in Case No. CF-2002-6236, is **AFFIRMED**. The April 6, 2007, order of the District Court revoking a three-and-a-half year portion of the suspended sentence in Case No. CF-2000-6302 is **REVERSED WITH INSTRUCTIONS TO DISMISS** the Application to Revoke. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008), **MANDATE IS ORDERED ISSUED** upon the filing of this decision.

⁴ *Harris*, ¶ 2, 772 P.2d at 1330.

⁵ *Id.*

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OPINION BY: A. JOHNSON, J.
Lumpkin, P.J.: Concur
C. Johnson, J.: Concur
Chapel, J.: Concur
Lewis, J.: Concur

RE

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