

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

TRACY ALLEN MITCHON, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

No. RE-2002-1077

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
AUG 25 2003  
MICHAEL S. RICHIE  
CLERK

**SUMMARY ORDER REVERSING AND REMANDING  
REVOCATION OF SUSPENDED SENTENCE**

The Appellant, Tracy Allen Mitchon, has appealed to this Court from the revocation of his suspended sentence in Case No. CF-1998-221 in the District Court of Creek County, before the Honorable Joe Sam Vassar, District Judge. On April 21, 1999, Appellant entered a plea of guilty to Driving While Under the Influence of Intoxicating Liquor, Second or Subsequent Offense, and was sentenced to a term of five (5) years, with the sentence to be suspended upon successful completion of the Key to Life Program. On May 1, 2000, after Appellant had completed the Key to Life program, his sentence was modified to time served with balance of the five (5) year sentence suspended, subject to the rules and conditions of probation.

On July 3, 2002, the State filed an application to revoke Appellant's suspended sentence alleging several violations of probation. On August 12, 2002, an amended application to revoke was filed and the revocation hearing was held. After the evidence was presented, Judge Vassar found that

Appellant had violated rules and conditions of his probation, and revoked the suspended sentence. The written order states that Appellant's suspended sentence should be revoked, and that he is ordered "[s]entenced to a term of 5 years (in full) imprisonment."

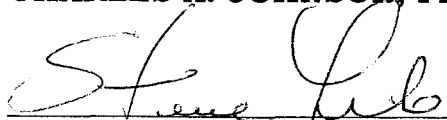
In this appeal, Appellant asserts one (1) proposition of error. Appellant claims the written order revoking was in error because it failed to comport with the court's oral order; Mr. Mitchon had less than the five years revoked remaining on his suspended sentence. The State has responded noting the Appellant's contention that he had less than five years remaining on his suspended sentence has merit.

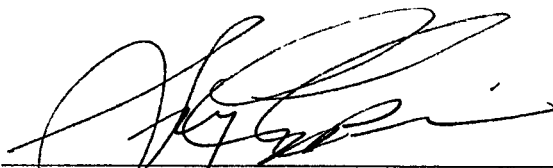
**IT IS THEREFORE THE ORDER OF THIS COURT** that the order of the District Court of Creek County revoking Appellant's suspended sentence in Case No. CF-1998-221 should be, and is hereby, **REVERSED** and **REMANDED** to the District Court to determine the amount of time previously served for which Appellant should be credited, and to correct the written order revoking Appellant's suspended sentence to so reflect.

**IT IS SO ORDERED.**

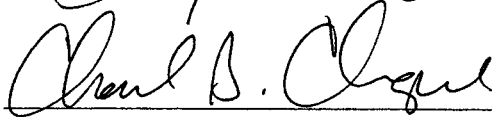
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 25<sup>th</sup> day of August, 2003.

  
\_\_\_\_\_  
**CHARLES A. JOHNSON, Presiding Judge**

  
\_\_\_\_\_  
**STEVE LILE, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**



**CHARLES S. CHAPEL, Judge**



**REFA M. STRUBHAR, Judge**

ATTEST:

  
Clerk