

ORIGINAL



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

JADE CHRISTIAN NICHOLS,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. RE-2019-850

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

MAR 25 2021

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION

ROWLAND, VICE PRESIDING JUDGE:

Jade Christian Nichols appeals the order of the District Court of Canadian County revoking the outstanding portion of his suspended sentence in Case No. CF-2014-591.

In his first proposition of error, Appellant contends that the judge that presided at the revocation hearing was not neutral and detached and that he is, therefore, entitled to a new hearing before a different judge. The State agrees. So do we.

When Appellant entered negotiated pleas of guilty in November of 2014, he was represented by Mr. Charles Gass. Some four years later, the Honorable Charles Gass, Special Judge, presided over the

hearing that resulted in the revocation of the remaining four years of Appellant's suspended sentence.

"No judge of any court shall sit in any cause or proceeding . . . in which he has been of counsel for either side . . . without the consent of the parties to said action entered of record." 20 O.S.2011, § 1401(A). There is nothing in the record to suggest that Judge Gass recalled his earlier representation of Appellant. Nonetheless, the record does not contain the requisite waiver.

Section 1401 is in keeping with the minimum due process standards required for revocation proceedings. "[T]he revocation of parole or probation should be made by a "neutral and detached" hearing body that is an "independent decisionmaker" not directly involved in the case." *Wortham v. State*, 2008 OK CR 18, ¶ 8, 188 P.3d 201, 204 (citing *Morrissey v. Brewer*, 408 U.S. 471, 485-86 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

Accordingly, the order of the district court of Canadian County revoking four years of Appellant's suspended judgment and sentence in Case No. CF-2014-591 is **REVERSED** and the case is **REMANDED** to the District Court with instructions to hold a new revocation

hearing before a different judge. Appellant's remaining propositions of error are moot.

**AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE CHARLES GASS, SPECIAL JUDGE**

**APPEARANCES AT
REVOCATION**

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OPINION BY: ROWLAND, V.P.J.:

KUEHN, P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur
HUDSON, J: Concur

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