

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STEPHEN CHARLES SWANSON, JR.,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE 2016-0913

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

DEC 14 2017

SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

Appellant, Stephen Charles Swanson, Jr., pled guilty February 23, 2010, in Ottawa County District Court Case No. CF-2009-193, to Count 1 – Placing Body Fluids on Police Officer, After Former Conviction of a Felony; Count 2 – Assault, a misdemeanor; and Count 3 – Public Intoxication, a misdemeanor. He was sentenced on Count 1 to twenty years, suspended with all but the first 30 days to be served in the Ottawa County Jail, with rules and conditions of probation and with credit for time served. He was also fined \$1,000.00 on Count 1, \$250.00 on Count 2 and \$50.00 on Count 3.

The State filed an application to revoke Appellant's suspended sentence on June 17, 2016. The State alleged (1) Appellant was convicted of Violation of Protective Order in Tulsa County Case No. CM-2015-3136 on July 30, 2015, and was sentenced to one year in the Tulsa County Jail, suspended; (2) Appellant was charged February 5, 2016, in Tulsa County District Court with Larceny of Merchandise from a Retailer; (3) Appellant was charged on February

23, 2016, in Tulsa County District Court Case No. CM-2016-940 with Count 1 – Assault and Battery and Count 2 – Threatening an Act of Violence; (4) Appellant failed to report as directed; (5) Appellant absconded; (6) Appellant failed to pay probation fees, fines and costs as directed; (7) Appellant was charged with Count 1 – Obstructing an Officer, Count 2 – Resisting an Officer, Count 3 – Driving Under the Influence of Alcohol and Count 4 – Transporting Open Container-Alcohol on July 13, 2010, in Tulsa County Case No. CM-2010-3094; to which he entered a plea of no contest on September 22, 2010, and was sentenced to one year; (8) Appellant failed to complete any programs as directed; and (9) Appellant failed to maintain employment.

At the revocation hearing on September 28, 2016, Appellant stipulated to the State's allegations in the application to revoke. Based upon the stipulation, the Honorable William Culver, Special Judge, found Appellant violated the rules and conditions of probation and revoked Appellant's suspended sentence in full, with credit for time served.

Appellant appeals the revocation of his suspended sentence raising the sole proposition of error that revocation in full was excessive. We affirm the order of the District Court revoking Appellant's suspended sentence in full.

The decision to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and such decision will not be disturbed absent an abuse thereof. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3rd 554, 557. "An 'abuse of discretion' has been defined by this Court as a 'clearly erroneous conclusion and judgment, one that is clearly against the logic and

effect of the facts presented in support of and against the application’.” *Walker v. State*, 1989 OK CR 65, ¶ 5, 780 P.2d 1181. Appellant has not shown an abuse of discretion.

DECISION

The revocation of Appellant’s suspended sentence in Ottawa County District Court Case No. CF-2009-193 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

REVOCATION APPEAL FROM THE DISTRICT COURT OF OTTAWA COUNTY, THE HONORABLE WILLIAM CULVER, SPECIAL JUDGE

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OPINION BY: LUMPKIN, P.J.:

LEWIS, V.P.J.: Concur
HUDSON, J.: Concur
KUEHN, J.: Concur
ROWLAND, J.: Concur

RA

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