

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

JASON O'NEAL SIMS,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

)
) **NOT FOR PUBLICATION**
)

) **No. F-2017-911**
)

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

APR -4 2019

S U M M A R Y O P I N I O N

JOHN D. HADDEN
CLERK

HUDSON, JUDGE:

On August 26, 2009, Appellant Sims, represented by counsel, entered guilty pleas to two counts of Second Degree Burglary in Beckham County Case Nos. CF-2009-194 and CF-2009-226. Sims was sentenced to twenty-one (21) years for each count, with all but the first eight (8) years suspended. The sentences were ordered to be served concurrently. On April 29, 2014, the State filed an Application to Revoke Sims's suspended sentences alleging he committed the new offense of Possession of a Controlled Substance in the Presence of a Minor and Within 1000 feet of a School as charged in Beckham County Case No. CF-2014-186.

On July 11, 2014, Sims entered a guilty plea in Case No. CF-2014-186. Sentencing was deferred in all three cases pending Sims's completion of the Beckham County Drug Court program.¹

On July 13, 2017, the State filed an Application to Terminate Sims from Drug Court alleging numerous Drug Court contract violations. On August 30, 2017, at the conclusion of the hearing on the State's application, the Honorable Doug Haught, District Judge, terminated Sims's Drug Court participation and sentenced him as specified in his plea agreement. From this judgment and sentence, Sims appeals, raising the following propositions of error:

1. The trial judge abused his discretion by failing to consider the adequacy of further disciplinary sanctions; and
2. The written judgments and sentences need to be corrected *nunc pro tunc* to reflect that Mr. Sims has been ordered to

¹ Upon successful completion of Drug Court, Sims was to be sentenced as follows:

Case Nos. CF-2009-194 and CF-2009-226: Dismissal of the April 29, 2014 Revocation Application with costs; Case No. CF-2014-186, eight (8) years, all suspended, with costs. The sentences in all three cases would be ordered to run concurrently.

If Sims was terminated from Drug Court, he was to be sentenced as follows:

Case Nos. CF-2009-194 and CF-2009-226: Revocation of the balance of the suspended sentences with costs; Case No. CF-2014-186, fifteen (15) years to do. The sentence in all three cases would be ordered to run concurrently.

serve 13 years on CF-2009-194 and CF-2009-226; Mr. Sims was not revoked in full.

Sims's termination from Drug Court participation is **AFFIRMED**. The request for issuance of an order *nunc pro tunc* is **DISMISSED** as **MOOT**.

Prior to terminating a defendant from Drug Court, the District Court must find that the offender violated the terms and conditions of the plea agreement or performance contract, and that disciplinary sanctions have been insufficient to gain compliance. See 22 O.S.2011 § 471.7(E); *Hagar v. State*, 1999 OK CR 35, ¶ 11, 990 P.2d 894, 898. The judge is to consider relapses and order increasing sanctions, "except when the offender's conduct requires revocation from the program." *Id.*; 22 O.S. § 471.7(E). Absent an abuse of discretion, this Court will not reverse a ruling of the District Court terminating a defendant from Drug Court. *Hagar, id.*

Sims does not dispute that he violated the terms of his Drug Court contract. Instead he argues that Judge Haught should have considered further sanctions before terminating his Drug Court participation. As noted above, the trial court's action in terminating a participant from Drug Court is reviewed for abuse of discretion. See 22 O.S.2011 §

471.7(E); *Hagar*, 1999 OK CR 35, ¶ 11, 990 P.2d at 898. There is no evidence, and Sims presents none, that the court failed to consider his relapses, progressive sanctions, and the insufficiency of those sanctions. The record in this matter reveals during his three year Drug Court tenure, Sims was sanctioned no fewer than nine times and had completed only two phases of the required five phase program. Most of those sanctions were for continued, repetitive drug² use. Based upon the record presented for review, we find no evidence that Judge Haught did not properly consider the imposition of additional sanctions prior to terminating Sims's Drug Court participation, and find no abuse of discretion here.

Sims alleges at proposition two that his judgments and sentences entered in Case Nos. CF-2009-194 and CF-2009-226 inaccurately reflected that those sentences were revoked in full, instead of stating that the remaining balances of the suspended sentences were revoked. In its response, the State attached copies of amended judgments and sentences filed in these two cases correcting the complained of error. We

DISMISS proposition two as **MOOT**.

² During his Drug Court term, Sims tested positive for or admitted using methamphetamine, THC, alcohol, Soma, marijuana, Norco (hydrocodone), Kratom and Suboxone.

DECISION

The order of the District Court of Beckham County terminating Appellant from Drug Court in Case Nos. CF-2009-194, CF-2009-226 and CF-2014-186 are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BECKHAM COUNTY
THE HONORABLE DOUG HAUGHT, DISTRICT JUDGE

APPEARANCES AT TRIAL

RICHARD YOHN
P.O. BOX 1494
CLINTON, OK 73601

COUNSEL FOR APPELLANT

LYNN LAWRENCE
ASST. DISTRICT ATTORNEY
BECKHAM CTY. COURTHOUSE
SAYRE, OK 73662

COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

LISBETH L. MCCARTY
APPELLATE DEFENSE COUNSEL
P.O. BOX 926
NORMAN, OK 73070

COUNSEL FOR APPELLANT

MIKE HUNTER
ATTORNEY GENERAL OF
OKLAHOMA
THEODORE M. PEEPER
ASSISTANT ATTORNEY GENERAL
313 N.W. 21st STREET
OKLAHOMA CITY, OK 73105

COUNSEL FOR THE STATE

OPINION BY: HUDSON, J.

LEWIS, P.J.: CONCUR

KUEHN, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

ROWLAND, J.: CONCUR

RA/F