

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

WILLIAM SINGLETON WALL, III,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION

No. F 2017-1055

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 10 2019

JOHN D. HADDEN,
CLERK

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellant, William Singleton Wall, III, was charged on February 18, 2014, with Possession of Controlled Dangerous Substance (Oxycodone), Second and Subsequent, in Pontotoc County District Court Case No. CF-2014-61. Appellant entered a plea of *nolo contendere* on March 24, 2014, and was admitted into the Pontotoc County Drug Court Program. If successful, the case would be dismissed and expunged; if not, Appellant would be sentenced to ten years imprisonment.

The State filed an application to terminate Appellant from the Pontotoc County Drug Court Program on April 19, 2017, alleging Appellant tested positive for THC. Following a hearing on the State's

application on October 11, 2017, the Honorable Thomas S. Landrith, District Judge, sustained the State's application and terminated Appellant from the Pontotoc County Drug Court Program. Appellant was sentenced to ten years with credit for time served.

Appellant appeals from his termination from Drug Court. On appeal Appellant argues the following propositions of error:

1. The court abused its discretion by terminating Appellant from Drug Court. There was insufficient evidence of an unsanctioned violation.
2. The record contains no performance contract, treatment plan, or otherwise describes the terms of Appellant's Drug Court participation, Appellant should not have been terminated for violating provisions of which he had no notice.
3. The State filed the application after the period allotted for Drug Court participation expired. The court lacked authority to terminate and sentence Appellant.

We affirm the trial court's order to terminate Appellant from the Pontotoc County Drug Court Program.

1.

Appellant failed to object to the introduction of the violation report at the termination hearing which reflected that Appellant admitted to drug use and had a positive drug test on April 11, 2017. The decision to revoke or terminate from Drug Court lies within the

discretion of the Drug Court judge. *Hagar v. State*, 1999 OK CR 35, ¶ 11, 990 P.2d 894, 898. Appellant has not shown that his termination from the Drug Court program was an abuse of discretion.

2.

Appellant argues that the record does not include a performance contract, a treatment plan, an eligibility form, or any other document explaining the terms and conditions of Drug Court participation and that he should not be terminated for violating provisions of which he had no notice.

In a Supplemental Designation of Record filed in this District Court on October 24, 2017, appellate counsel designated the “entire Pontotoc County Drug Court file”. On January 31, 2018, appellate counsel filed an objection to the record in this Court stating he had not received the designated Drug Court file. In an Order issued on February 6, 2018, the matter was remanded to the District Court for findings of fact regarding Appellant’s objection to the record on appeal. Findings of Fact were filed in this Court on March 19, 2018, concluding Appellant “never had a separate Drug Court file” and that the record as previously submitted was complete. No further objection to the record was made by either party.

The transcript of the Drug Court plea reflects that the trial judge asked Appellant's counsel whether he had gone over the Drug Court contract with Appellant and counsel answered "yes". The trial judge asked counsel whether he believed Appellant understands the nature, purpose and consequences of his Drug Court contract and counsel answered that he did. The trial judge then asked Appellant whether he went over this with his counsel and whether he had any questions about it and Appellant answered "no". The trial judge also asked Appellant whether he understood that if he messed up and violated the terms of his Drug Court contract that he would get ten years and Appellant answered that he understood.

In an Order issued August 1, 2019, this Court issued a directive to Judge Kessinger directing him to transmit a certified, file-stamped copy of the Drug Court Performance Contract to this Court or advise why it is not available. A response by Judge Kessinger was filed on August 9, 2019, with a copy of the Performance Contract that is not certified or file stamped. While Judge Kessinger found the Performance Contract is a true and correct copy signed by Appellant, he also found the Performance Contract was not filed of record with

the Pontotoc County Court Clerk. The original was maintained by the Pontotoc County Drug Court Program.

The record does not support Appellant's argument that he had no notice. Appellant has not shown an abuse of discretion. While we do not find error in this case, the Drug Court contract and records related to the Drug Court program must be filed of record. The Drug Court contract is a part of the record on the plea of guilty and the Drug Court file must be maintained of record to ensure any appeal by a defendant includes the entirety of the record to be considered on appeal. While certain confidentiality is required in the Drug Court program, records must be available for a defendant if an appeal is filed.

3.

Appellant entered Drug Court on March 24, 2014, and the State's application to terminate Appellant from Drug Court was filed on April 19, 2017. Citing Section 471.6(G) of Title 22, Appellant argues that the trial court lacked jurisdiction to terminate him from Drug Court since the State filed its motion over three years after Appellant entered the program.

To the extent that sentencing is delayed pending participation in Drug Court, these cases are comparable to situations where a defendant receives a deferred sentence. *Looney v. State*, 2002 OK CR 27, ¶ 9, 49 P.3d 761, 763. The termination of a defendant from Drug Court is analogous to an acceleration of a deferred sentence. *Hagar v. State*, 1999 OK CR 35, ¶¶ 9-11, 990 P.2d 894.

Subsection G of Section 471.6 deals with timing issues related to the active treatment portion of the Drug Court program. The statutory language does not limit the timing of the filing of an application to terminate. We find no authority for Appellant's interpretation of Section 471.6(G).

While the statutory time allowed for the treatment portion of the Drug Court program may expire, Appellant remains subject to the jurisdiction of the District Court. Petitioner has been convicted but he has not been sentenced. Sentencing was delayed pending his successful completion or his termination from the Drug Court program.

In this case Appellant was neither terminated or otherwise released from the Drug Court program within the statutory time limits of Section 471.6(G). In effect, the time for the treatment portion

of the program expired terminating Appellant's Drug Court participation by operation of law. Authority reverted to the District Court for sentencing. Judge Landrith terminated Appellant from the Drug Court Program and sentenced him pursuant to the terms of the Drug Court contract. This proposition of error has no merit.

DECISION

The termination of Appellant from the Pontotoc County Drug Court Program in Pontotoc County District Court Case No. CF-2014-61 is **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 filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY, THE HONORABLE THOMAS S. LANDRITH, DISTRICT JUDGE

APPEARANCES AT DRUG COURT TERMINATION HEARING

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OPINION BY: LUMPKIN, J.

LEWIS, P.J.: Concur in Result
KUEHN, V.P.J.: Dissent
HUDSON, J.: Concur
ROWLAND, J.: Concur
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KUEHN, V.P.J., DISSENTING:

I concur with the Majority's holding as to Appellant's first two propositions of error,¹ but take issue with the third. For the following reasons, I dissent.

Appellant's third proposition challenges the validity of his Drug Court termination, alleging it took place after the statutorily mandated time period for his Drug Court participation had expired. Appellant was sentenced to Drug Court on March 24, 2014. State's Exhibit 1, presented at the Termination Hearing, shows that Appellant failed a drug test on April 11, 2017. On April 19, 2017, the State filed an Application to Terminate Appellant from Drug Court and cited the positive THC reading as the only violation. Title 22, O.S.Supp. 2016, § 471.6(G) states:

The period of time during which an offender may participate in the active treatment portion of the drug court program shall be not . . . more than twenty-four (24) months and may include a period of supervision not less

¹ Despite concurring with the first two propositions, it should be noted that the appeal record in this matter contains limited Drug Court documents. The Performance Contract submitted by the District Court and attached as Exhibit A to the *Acknowledgment of Compliance With Court of Criminal Appeals Order Dated August 1, 2019* lists the terms of his Drug Court responsibilities. Item #44 is the term of his treatment, which is within the statutory timeframe of three total years.

the treatment portion of the program. The period of supervision may be extended by order of the court for not more than six (6) months.

At the time of the alleged violation and the filing of the Application to Terminate, the court had neither ruled that Appellant completed the Drug Court program, nor entered an order establishing or extending supervision.

The Drug Court program is intended to be a “highly structured judicial intervention process for substance abuse treatment of eligible offenders which expedites the criminal case, and requires successful completion of the plea agreement.” 22 O.S.2011 § 471.1. The statute allows for offender participation in active treatment for no longer than two years, and a supervisory term of no longer than one year, totaling three years. After that, a final extension of supervision can only be granted by court order and can last no longer than six months.

Appellant argues that the State lost jurisdiction to terminate his participation three years after he entered Drug Court.² The State counters by claiming that it indefinitely retains the authority to

² The Application to Terminate was filed approximately one month after the three year deadline.

terminate Appellant from Drug Court, from the defendant's acceptance into the program to infinity.

The statutory time limitations support a finding that the Drug Court process is designed to conclude in a reasonable period of time. Unfortunately, the statute does not establish fixed deadlines for concluding a defendant's participation, whether successful or not. The statute does not mandate a hearing be conducted upon the expiration of the two year active treatment portion of the program or upon the determination of any extended period of supervision.

A practical solution exists to ensure the efficient conclusion of Drug Court proceedings. The trial court should automatically docket a review hearing set two years from the date a defendant is admitted into the program. *See* 22 O.S.Supp. 2016, § 471.6. The State could still file a Motion to Terminate at any time for the duration of the defendant's Drug Court tenure. At the two year hearing, the trial court would follow the guidelines set forth in Section 471.6(G) and either: (1) find that defendant has successfully completed Drug Court and enter judgment and sentence as specified in the plea agreement; (2) terminate the defendant from Drug Court participation and enforce the plea agreement; or (3) impose a period of supervision not

less than six months nor more than twelve months. 22 O.S.Supp. 2016 § 471.6(G).

If the court chooses to impose a period of supervision, review hearings should be docketed accordingly. If supervision is extended for a total of twelve months, one more final extension period may be granted by order of the court, not to exceed six months.³ By docketing hearings tied to each expiring time period, the end will always remain in sight and the parties are not forced to wait in Drug Court limbo. This procedure would benefit all parties by preventing untimely oversights and missed deadlines, as we have in this case.

Even though my proposal would eliminate the possibility of another mistake in the future, we must still consider the issue presented in this case. We must first decide if/when the trial court can terminate a Drug Court Participant after the statutory time limit. Then we must determine if the defendant can be terminated for violating rules that he was no longer required to follow.

³ Hearings should be set at the conclusion of each incremental period of supervision.

A ruling on whether the district court has the power to terminate Appellant from Drug Court will determine whether the Judgment and Sentence was proper.

The original plea agreement must contain a “clear statement” that specifies the “penalty to be imposed for the offense, both in the event of a successful completion of the drug court program, and in the event of a failure to complete the program.” 22 O.S.2011, § 471.2(B)(5). “The judge shall be prohibited from amending the written plea agreement after an offender has been admitted to the drug court program.” 22 O.S.2011, § 471.7(G).

According to 22 O.S.2011, § 471.2(B)(5), Judgment and Sentence can only follow a final ruling declaring that the defendant has either completed or is terminated from the program. That determination is necessary in order to invoke the sentence established in the plea agreement. Therefore, if the district court has lost the ability to terminate a Drug Court participant, then it has also lost the jurisdiction necessary to enter a Judgment and Sentence.

The Majority perplexingly states that the time requirements in Section 471.6(G) govern only a defendant’s treatment and supervision in Drug Court, but do not limit the judge’s power to

terminate and impose sentencing after that time has elapsed. This begs the question: how can a defendant be terminated from a program where he is, by operation of law, neither subject to supervision nor receiving treatment? I cannot endorse a statutory interpretation that allows the possibility of termination to continue long after the Legislature's statutorily-imposed time frame.

It is unclear why the Majority concludes that the district court perpetually retains jurisdiction over a defendant until he is properly sentenced, rather than the three year time limit plainly established by statute. The period of time in which the trial court shall have jurisdiction over a drug court participant is not unlimited. The timelines established in Section 471.6(G) would be rendered useless because a violation of the rules and conditions of Drug Court could result in a termination decades into the future, so long as the defendant's participation has not been officially declared "completed." If this were true, perhaps the Legislature should remodel the Drug Court program to reflect a familiar Eagles song: "You can checkout any time you like, but you can never leave!" EAGLES, *Hotel California*, on HOTEL CALIFORNIA, (Criteria Studios & Record Plant Studios 1976).

Laws concerning juvenile adjudication, suspended sentences, and deferred judgment show that sentencing can be delayed to a specific date in the future. Indeed, that is precisely what the Drug Court program is designed to do, assuming the timeline is followed. However, this Court has long held that a trial court may lose jurisdiction if the entry of judgment and sentence is postponed for an indefinite period of time. *Willard v. State*, 67 Okla. Crim. 192, 1939 OK CR 102, 94 P.2d 13, 17 (holding that if “no definite time was fixed in which the defendant should appear for sentence, the prosecution was abandoned and the court was without jurisdiction to pronounce the judgment and sentence.”); *Grant v. McLeod*, 1958 OK CR 51, ¶ 20, 325 P.2d 1083, 1089 (trial courts cannot delay sentencing indefinitely because doing so would allow the punishment to unfairly “hang over petitioner’s head, with his future life restricted, walled in, and hampered by chance and probability”).

The originally rigid rule endorsed in *Willard* and *Grant* has softened over the years. This Court began permitting a district court to enter judgment and sentence after an indefinite delay so long as 1) the length of time was not unreasonable, and 2) the defendant was not prejudiced. *Boykin v. State*, 86 Okla. Crim. 175, 198, 190 P.2d

471, 482; *Jones v. State*, 1975 OK CR 189, ¶ 9, 541 P.2d 219, 223. In *Boykin*, the sentencing was upheld because the defendant caused the delay by filing a Motion for New Trial then not acting on his own motion for over thirteen years. *Boykin*, 86 Okla. Crim. at 202-03, 190 P.2d at 484-85. In *Jones*, a sixteen month delay in sentencing was deemed proper because the appellant “was at liberty on bail” during the delay and “failed to demonstrate any prejudice.” *Jones*, 1975 OK CR 189, ¶ 9, 541 P.2d at 223.

The *Boykin* Court established that “[t]here is no fixed inflexible rule by when it may be said that any definite period of time amounts to an unusual delay.” *Boykin*, 86 Okla. Crim. 175, 190 P.2d 471 at 479. When deciding “whether the court lost jurisdiction to pronounce the sentence,” we are required to conduct an “examination of the facts in each particular case.” *Boykin v. State*, 86 Okla. Crim. at 192, 190 P.2d at 479.

In the present case, there is no doubt that the district court’s failure to enter Judgment and Sentence within the intended time frame constitutes an indefinite delay of sentencing. The lower court found, and the Majority agrees, that jurisdiction is never lost over a Drug Court participant until Judgment and Sentence is entered.

There is no more indefinite delay than “anytime between now and forever.”

This leaves analysis under the two part test from *Boykin* and *Jones* to determine if jurisdiction was lost. The actual delay in time was not unreasonable; the Motion to Terminate was filed roughly one month after the deadline passed. However, the defendant was prejudiced by the State’s actions.

Because the Application to Terminate listed a sole violation occurring after statute’s time limits, an upholding of the judgment would effectively be an unpermitted extension of the supervisory period. Forcing a Drug Court participant to abide by the numerous restrictive rules for a longer time than legally required is a serious limitation of his liberties and will always be viewed as prejudicial.

In *State v. Rodriquez*, a similar occurrence took place where the State sought to accelerate defendant’s deferred sentence because of a probation violation occurring after the period of supervision. *State v. Rodriquez*, 1976 OK CR 68, ¶ 4, 547 P.2d 974, 975. We held that a trial court does not have jurisdiction to accelerate a deferred sentence if the State’s Motion is not based on alleged violations that took place before the completion of probation. *Rodriquez*, 1976 OK

CR 68, ¶ 7, 547 P.2d at 975 (stating “[t]here are no exceptions.”). This Court went on to clarify by stating that “the actual hearing can be held . . . after the term of the deferred sentence has run, provided, that the application itself is filed prior to the end of the term.” *Rodriguez*, 1976 OK CR 68, ¶ 9, 547 P.2d at 975.

In the case before us, the Application to Terminate does not include an alleged violation that occurred before the supervision period ended and the Application was not filed before the three year time limit expired.

After recognizing that sentencing was delayed for an indefinite period of time, and noting that the State’s *de facto* extension of supervision beyond the permitted time length constitutes prejudicial action, it follows that the district court lost jurisdiction to sentence Appellant. Despite the delay being relatively short, the State did not satisfy both prongs of the test. The district court’s entry of Judgment and Sentence was improper and should be reversed.

Based on the forgoing arguments and authorities, I respectfully dissent.