

FILED
IN COURT OF CRIMINAL APPEALS
EALS STATE OF OKLAHOMA

JOHN D. HADDEN
CLERK

Appellee.

Case No. F-2018-563

On February 14, 2017, Appellant entered a plea of guilty to Count 1: Unlawful Possession of CDS – Methamphetamine, after former conviction of a felony; and Count 3: Resisting an Officer. Appellant agreed to enter Drug Court and was convicted and

sentenced to terms of seven years on Count 1 and one year on Count 3, with the sentences ordered to run concurrently. If successful in Drug Court, Appellant's sentences would be suspended, but if not, he would serve the sentences in the Department of Corrections.

On June 26, 2017, the State filed an application to terminate Appellant from Drug Court alleging he violated his rules and conditions by failing to report to the Drug Court office for an intake on February 14, 2017; missing a random urinalysis test on February 16, 2017; and by failing to appear in court and being AWOL from the program on February 24, 2017. On September 26, 2017, a hearing on the State's application was held before Judge Fry. The State called Dan Carter, the LeFlore County Drug Court Supervisor, who testified that he had never seen Appellant and that Appellant had not done anything required of him in the Drug Court program. During his testimony, Appellant acknowledged he had never shown up for Drug Court; but explained it was because his mother became very ill with cancer and he had to care for her day and night. Appellant testified he had two previous heart attacks and was on disability. Appellant promised that, if he was able to

start and attend the Drug Court program, there was no doubt he could complete it. Appellant testified he would be willing to go on a ninety day no tolerance, strict scrutiny, policy.

Judge Fry found that Appellant had violated his Drug Court contract by failing to show up. Judge Fry also noted Appellant made a terrible decision by not notifying someone with the Drug Court program why he was not showing up. Judge Fry placed Appellant on a ninety day no tolerance policy and chided him to remain in complete compliance.

On September 29, 2017, Appellant failed to appear for the Drug Court docket. Judge Fry issued an arrest warrant and his bail was revoked.

On April 30, 2018, the State filed a second application to terminate Appellant from Drug Court alleging he violated his rules and conditions by failing to report to the Drug Court office for intake after being released on September 12, 2017; by failing to appear in court on September 22, 2017; and by being AWOL from September of 2017 until April 13, 2018.

On May 22, 2018, the hearing on the State's second application to terminate Appellant from Drug Court was held before

Judge Fry. The State again called Dan Carter who testified that Appellant had never done anything to comply with the Drug Court program requirements. Appellant testified that he had a third heart attack shortly after the last hearing. Appellant acknowledged he had done nothing to comply with his Drug Court requirements.

Judge Fry noted Appellant had violated his promise from the previous hearing that he would report and complete the Drug Court program. Judge Fry also noted Appellant had presented no evidence to document either his or his mother's medical problems. Judge Fry terminated Appellant from the Drug Court program and imposed his seven year sentence of imprisonment in the Department of Corrections.

Appellant appeals asserting one proposition of error.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN TERMINATING MR. STOCKTON FROM DRUG COURT BEFORE HE HAD AN OPPORTUNITY TO WORK THE PROGRAM.

ANALYSIS

Appellant argues that being hospitalized for a third heart attack was a sufficient reason for failing to report and appear in court, and failing to comply with the no tolerance policy. Alternatively, Appellant argues that if Judge Fry believed drug

problems caused Appellant's failures, then disciplinary sanctions should have been used to gain his compliance.

The decision to revoke or terminate from Drug Court lies within the discretion of the trial court judge, and thus will not be overturned absent an abuse of that discretion. *Lewis v. State*, 2009 OK CR 30, ¶ 10, 220 P.3d 1140, 1143; *see also Hagar v. State*, 1999 OK CR 35, 990 P.2d 894. The Drug Court judge shall recognize relapses and restarts in the program and shall order progressively increasing sanctions, except when the offender's conduct requires revocation from the program. 22 O.S.2011, § 471.7(E); *see also Hagar, supra*.

Appellant had the opportunity to work his Drug Court program, twice, and failed both times to comply with any program requirements. The second failure occurred after Appellant previously assured Judge Fry there was no doubt he had the ability to show up and could complete the program. Judge Fry noted Appellant's and his mother's medical problems, but also noted no evidence had been presented to document those problems. Under the facts of this case, Judge Fry's finding that Appellant's conduct requires termination from the Drug Court program cannot be

considered an abuse of discretion. 22 O.S.2011, § 471.7(E); *see also Lewis, supra; Hagar, supra.*

DECISION

The order of the District Court of LeFlore County terminating Appellant from Drug Court and sentencing him to seven years imprisonment in accordance with the Drug Court contract in Case No. CF-2016-380 should be, and is hereby, **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 forthwith upon the filing of this decision with the Clerk of this Court.

AN APPEAL FROM THE DISTRICT COURT OF LEFLORE COUNTY, THE HONORABLE MARION D. FRY, ASSOCIATE DISTRICT JUDGE

APPEARANCES IN THE DISTRICT COURT

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OPINION BY: ROWLAND, J.

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