

ORIGINAL


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

JERMAINE THRASH,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2017-484

FILED

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

APR - 4 2019

SUMMARY OPINION

**JOHN D. HADDEN
CLERK**

KUEHN, VICE PRESIDING JUDGE:

Appellant, Jermaine Thrash, appeals from the revocation of his ten year suspended sentence in Case No. CF-2005-4341 in the District Court of Oklahoma County, by the Honorable Michelle D. McElwee, District Judge. On October 11, 2005, Appellant entered a plea of guilty to Count 1 – Rape in the First Degree; and Count 2 – Forcible Oral Sodomy. He was convicted and sentenced on each count to a term of fifteen years with all but the first five years suspended and the sentences to run concurrently.

On September 29, 2015, the State filed an application to revoke Appellant's suspended sentence alleging he violated probation by testing positive for illegal drugs; failing to pay supervision fees; failing

to participate in sex offender treatment program; and possessing pornographic material. Appellant waived the twenty day hearing requirement and the hearing was continued several times to allow Appellant to get into compliance with probation requirements. On May 1, 2017, the hearing on the application to revoke was held before Judge McElwee.

At the revocation hearing, the State called Megan Hicks (“Hicks”), Appellant’s probation officer to testify. Hicks testified she had supervised Appellant since February of 2015, and that he had not consistently attended sex offender treatment during that time. Hicks said there had been a problem with Appellant’s finances and Appellant attended counseling while insurance arrangements were attempted, but when insurance could not be used Appellant never reported back and never attempted to begin treatment again.

Hicks also testified that Appellant had violated probation by using illegal drugs. In April of 2015, Appellant admitted using meth-amphetamines. On June 11, 2015, Appellant tested positive for cocaine, methamphetamines and amphetamines. Appellant also admitted to using cocaine at his home on June 9, 2015. On June 15,

2015, Hicks and other officers searched Appellant's home and tested him for drugs. Appellant tested positive for cocaine, and three glass pipes and a marijuana grinder were found in the home. Hicks testified that Appellant had tested positive for drugs in April of 2015, June of 2015, August of 2015, September of 2015, April of 2016, May of 2016, August of 2016, December of 2016, and one time in 2017 as well. Hicks testified that throughout the time Appellant was testing positive for drugs, he was not attending sex offender treatment because he could not afford it. Hicks testified Appellant had also admitted to watching pornography in August of 2014, April of 2015, and June of 2016. Hicks testified she had tried to sanction Appellant and had tried to get him into compliance with probation requirements, but the only rule and condition he had abided by was reporting on a weekly basis.

Offering mitigation, Appellant took the stand and testified that he used drugs to self-medicate and to deal with the problems of being a convicted felon, a sex offender, and homeless. Judge McElwee asked Appellant when was the last time he used drugs, and Appellant replied "yesterday." Judge McElwee asked how he afforded the drugs

and Appellant replied he got them free.

After hearing arguments, Judge McElwee found that Appellant violated probation by testing positive for illegal drugs; by not participating in sex offender treatment; and by possessing pornographic material. Judge McElwee revoked Appellant's ten year suspended sentence in full.

Appellant appeals asserting one proposition of error:

PROPOSITION I:

MR. THRASH'S TECHNICAL VIOLATIONS ALONE DO NOT JUSTIFY REVOKING HIS SENTENCE IN FULL AND THEREFORE, UNDER THESE FACTS, THE SENTENCE IS EXCESSIVE.

ANALYSIS

The decision of the trial court to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and will not be disturbed absent an abuse thereof. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. Moreover, violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557.

Appellant contends that his violations of probation were technical in nature and should not warrant revocation of his ten year suspended sentence in full. However, continued use of illegal drugs while on probation is not a technical violation. Appellant had numerous chances to come into compliance with probation requirements. Judge McElwee's decision to revoke Appellant's ten year suspended sentence is not an abuse of discretion. *Jones, supra.*

DECISION

The order of the District Court of Oklahoma County revoking Appellant's ten year suspended sentence in Case No. CF-2005-4341 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 OKLAHOMA COUNTY
THE HONORABLE MICHELE D. MCELWEE, DISTRICT JUDGE

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OPINION BY: KUEHN, V.P.J.

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR

RA/F