

**ORIGINAL
ORIGIN**



FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

DEC 12 2019

JOHN D. HADDEN
CLERK

RICHARD JAMES NUNES,)
Appellant,)
-vs-)
THE STATE OF OKLAHOMA,)
Appellee.)

NOT FOR PUBLICATION

No. RE-2018-1236

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Richard James Nunes, appeals from the revocation in full of his eight year suspended sentence in Case No. CF-2014-450 in the District Court of Seminole County, by the Honorable George Butner, District Judge. On March 12, 2015, Appellant entered a plea of guilty to Count 1 – Possession of a Stolen Vehicle, felony, after former conviction of two or more felonies; and Count 2 – Altering License Plate/Decal, misdemeanor. He was convicted and sentenced on Count 1 to a term of ten years, with all but the first two years suspended pursuant to rules and conditions of probation; and on Count 2 to a term of one year, with the sentences to run concurrently.

On December 27, 2017, the State filed a motion to revoke Appellant's suspended sentence alleging he violated probation by failing to report when he was released from confinement and by being an absconder from probation. On January 23, 2018, Appellant made his initial appearance without counsel on the motion to revoke. On February 2, 2018, counsel was appointed for Appellant. On February 8, 2018, Appellant posted bond and was released from jail. On February 15, 2018, Appellant failed to appear at a scheduled hearing. Appellant next appeared, without counsel, on October 16, 2018. On October 26, 2018, counsel was appointed for Appellant. On November 15, 2018, Appellant appeared with counsel at a status conference and the matter was continued to November 26, 2018.

On November 26, 2018, the hearing on the motion to revoke was held before Judge Butner. The State called Ralph Stumpf ("Stumpf"), the probation officer assigned to Appellant's case. Stumpf testified that Appellant never reported after he was released from incarceration, and was considered an absconder from probation. Stumpf detailed several unsuccessful attempts he had made to locate Appellant. Stumpf said Appellant was caught when officers went to

the apartment of a known acquaintance of Appellant, and Appellant ran out the back door. Appellant testified and gave varying reasons for his failure to report and to abide by his rules and conditions of probation. Judge Butner found that Appellant violated probation as alleged and revoked Appellant's eight year suspended sentence in full. Appellant appeals asserting one proposition of error.

PROPOSITION I:

THE COURT SHOULD FIND THE TRIAL COURT ABUSED ITS DISCRETION IN REVOKING APPELLANT'S SUSPENDED SENTENCE BECAUSE THE REVOCATION HEARING WAS NOT HELD IN A TIMELY MANNER.

ANALYSIS

"Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of the person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the state and the defendant." 22

O.S.Supp.2016, § 991b(A).

Appellant acknowledges that the 20 day rule in Section 991b is triggered by a plea of not guilty to the motion to revoke, but claims he was never given the opportunity to enter a plea. Appellant contends this Court should conclude the hearing in this case was not timely, no valid waiver appears in the record and plain error occurred. He asks that the order revoking his suspended sentence be reversed and the matter remanded to the District Court with instructions to dismiss the motion to revoke.

As the State argues, and Appellant acknowledges, Appellant never entered a plea of not guilty to the motion to revoke his suspended sentence in this case. Therefore, according to the express language of Section 991b(A), the statutory twenty day time period for conducting the revocation hearing never began to run. 22 O.S.Supp.2016, § 991b(A). Moreover, the lengthy delay in conducting the revocation hearing in this case was primarily caused by Appellant absconding from responsibilities.

DECISION

The order of the District Court of Seminole County revoking in

full Appellant's eight year suspended sentence in Case No. CF-2014-450 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 SEMINOLE COUNTY, THE HONORABLE
GEORGE BUTNER, DISTRICT JUDGE

**APPEARANCES IN THE
DISTRICT COURT**

ZACHARY L. PYRON
Attorney at Law
P. O. Box 1663
Seminole, OK 74818
COUNSEL FOR APPELLANT

CHRISTOPHER ANDERSON
Assistant District Attorney
Seminole County Courthouse
P. O. Box 1300
Wewoka, OK 74884
COUNSEL FOR THE STATE

**APPEARANCES ON
APPEAL**

ROBERT W. JACKSON
Appellate Defense Counsel
P. O. Box 926
Norman, OK 73070
COUNSEL FOR APPELLANT

MIKE HUNTER
Attorney General of Oklahoma
CAROLINE E. J. HUNT
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
COUNSEL FOR THE STATE

OPINION BY: HUDSON, J.
LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCUR IN RESULTS
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR

RA/F