

ORIGINAL



FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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

FEB - 6 2020

JOHN D. HADDEN
CLERK

**DARRYN LAMAR
CHANDLER, JR.,**

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2018-1287

SUMMARY OPINION

HUDSON, JUDGE:

Appellant, Darryn Lamar Chandler, Jr., appeals from the revocation in full of his concurrent four year suspended sentences in Case Nos. CF-2015-2683 and CF-2016-534 in the District Court of Oklahoma County, by the Honorable Glenn Jones, District Judge. In Case No. CF-2015-2683, Appellant entered a plea of guilty to Count 1 – Possession of a Controlled Dangerous Substance With Intent to Distribute - Marijuana; Count 2 – Possession of an Offensive Weapon While Committing a Felony; and Count 4 - Possession of an Imitation Controlled Dangerous Substance With Intent to Distribute. He was convicted and sentenced to terms of five years, all suspended but the first year, on Counts 1 and 2, and to one year imprisonment on Count

4, with all sentences ordered to run concurrently with each other and with Appellant's sentences in Case No. CF-2016-534. In Case No. CF-2016-534, Appellant entered a plea of guilty to Count 1 – Robbery With a Firearm; and Count 2 – Conspiracy to Commit a Felony, to-wit: Robbery With a Firearm. He was convicted and sentenced on Counts 1 and 2 to terms of five years, all suspended but the first year, and ordered to run concurrently with each other and with Appellant's sentences in Case No. CF-2015-2683.

On September 21, 2018, the State filed an application to revoke Appellant's suspended sentence alleging he violated probation by committing the new crimes of Count 1 - Robbery With a Firearm; Count 2 - Robbery With a Firearm; Count 3 – Robbery By Two or More Persons; Count 6 – Robbery By Two or More Persons; and Count 7 – Robbery By Two or More Persons, as charged in Case No. CF-2017-6465 in the District Court of Oklahoma County. On November 27, 2018, the revocation hearing began before Judge Jones.

At the hearing, the State presented evidence that Appellant and a co-defendant robbed a loan business in Oklahoma City. When they entered the business, Appellant pulled a gun and the accomplice

locked the door. The robbers were screaming and yelling wanting to know where the money was and an employee got a bag of money out of a drawer and gave it to them. Appellant put the gun to one employee's face and started dragging her by the shirt, asking where the rest of the money was. The accomplice held two other employees at gunpoint and made them lay down by a desk. The employee held by Appellant laid down on top of the other employees and told the robbers all of the money was in the drawers. The robbers went through the drawers, then left with a laptop, a purse, a bank bag, and three envelopes that contained about \$800.00. Appellant presented no evidence.

After hearing the evidence and arguments, Judge Jones found Appellant violated probation by committing the offenses of Robbery With a Firearm and Robbery By Two or More Persons, and announced that Appellant's suspended sentences in both cases were revoked in full. After consulting with Appellant, counsel for Appellant requested a presentence investigation report. Judge Jones granted the request and continued the hearing until December 20, 2018.

On December 20, 2018, the DOC Pre Sentence Investigation report ("PSI") was filed and the revocation hearing resumed for sentencing. The State argued that Appellant committed a violent robbery with a firearm while on probation and should be revoked in full. Counsel argued that Appellant was a minimal participant in the crimes committed in both Case No. CF-2015-2683 and Case No. CF-2016-534 and that his less than ideal family background should be considered. Counsel claimed that the PSI shows opportunity and potential for a positive future for Appellant, but he needs substance abuse and mental health treatment. In rebuttal, the State noted the PSI did not include details of the alleged probation violations and thus the preparer of the report may not have been aware of those details. The State argued that Appellant's background had already been considered as shown by the very low sentences in the two cases. Finally, the State gave details showing Appellant was more than a minimal participant in the crimes committed in the two cases.

Judge Jones began by noting that the preparer of the PSI was probably instructed not to detail the alleged violations because charges are still pending. Judge Jones agreed that the light

sentences in the two cases indicated that Appellant's background had already been taken into account. Judge Jones noted that Appellant violated probation by committing the same type of crime, robbery, for which he had been convicted. Judge Jones revoked Appellant's concurrent four year suspended sentences in full.

Appellant appeals asserting one proposition of error:

**PROPOSITION I:
THE TRIAL COURT ABUSED ITS DISCRETION BY
FAILING TO TAKE INTO CONSIDERATION THE
PRESENCE INVESTIGATION REPORT RESULTING IN
AN EXCESSIVE SENTENCE.**

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. Judge Jones' decision to revoke in full Appellant's four year suspended sentences cannot be considered an abuse of discretion, when evidence was presented that Appellant violated probation by committing a very violent robbery with a firearm while he was on probation.

DECISION

The order of the District Court of Oklahoma County revoking in full Appellant's concurrent four year suspended sentences in Case Nos. CF-2015-2683 and CF-2016-534 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE GLENN JONES, DISTRICT JUDGE

APPEARANCES IN THE DISTRICT COURT

MICAH SIELERT
Assistant Oklahoma County
Public Defender
320 Robert S. Kerr Ave., St. 611
Oklahoma City, OK 73102
COUNSEL FOR APPELLANT

JESSICA FOSTER
Assistant District Attorney
County Office Building
320 Robert S. Kerr Ave., St. 505
Oklahoma City, OK 73102
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

HALLIE ELIZABETH BOVOS
Assistant Oklahoma County
Public Defender
320 Robert S. Kerr Ave., St. 400
Oklahoma City, OK 73102
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
LUMPKIN, J.: CONCUR IN RESULTS
ROWLAND, J.: CONCUR

RA/F