



**ORIGINAL**

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

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

MAY 30 2019

JOHN D. HADDEN  
CLERK

**COURTNEY QUILLEN,**

**NOT FOR PUBLICATION**

**-vs-**

**No. RE-2018-232**

**THE STATE OF OKLAHOMA,**

**Appellee.**

**SUMMARY OPINION**

**KUEHN, VICE PRESIDING JUDGE:**

Appellant, Courtney Quillen, appeals from the revocation in full of her concurrent seven year suspended sentences in Case Nos. CF-2015-817 and CF-2016-205 in the District Court of Pontotoc County, by the Honorable Gregory D. Pollard, Special Judge.

On August 25, 2016, Appellant entered pleas of nolo contendere in both cases. In Case No. CF-2015-817, Appellant was convicted of nine counts of Uttering a Forged Instrument and was sentenced to terms of seven years on each count, with all time suspended and the sentences ordered to run concurrently with each other and with Case

No. CF-2016-205. In Case No. CF-2016-205, Appellant was convicted of one count of Uttering a Forged Instrument and was sentenced to a term of seven years, with all time suspended and the sentence ordered to run concurrently with Case No. CF-2015-817.

On March 3, 2017, the State filed a motion to revoke Appellant's suspended sentence in Case No. CF-2016-205 alleging a) that she violated probation by failing to pay the District Attorney Prosecution Reimbursement Fee, and b) that she owed \$960.00. On September 29, 2017, the State filed an amended motion to revoke Appellant's suspended sentences in Case No. CF-2016-205 adding a violation of probation that Appellant had committed the new crime of Count 1 - First Degree Robbery By Force and Fear, as charged in Pontotoc County District Court Case No. CF-2017-486. On February 2, 2018, the State filed a second amended motion to revoke Appellant's suspended sentences adding violations of probation that Appellant had committed the new crime of Count 2 – Conspiracy to Commit a Felony, as charged in Pontotoc County District Court Case No. CF-2017-486; and had failed to pay probation fees. On February 8, 2018, the State filed a motion to revoke Appellant's suspended sentences in

Case No. CF-2015-817 alleging she violated probation by committing the new crimes of Count 1 - First Degree Robbery By Force and Fear, and Count 2 - Conspiracy to Commit a Felony, as charged in Pontotoc County District Court Case No. CF-2017-486; by failing to pay District Attorney supervision fees; and by failing to pay probation fees.

On February 26, 2018, the revocation hearing in Case Nos. CF-2015-817 and CF-2016-205 was held before Judge Pollard, in conjunction with the preliminary hearing in Case No. CF-2017-486. The State presented the testimony of the victim and two police officers who investigated the robbery. The evidence showed that Appellant and her two co-defendants developed a plan to rob a pizza delivery person. Appellant placed the call to have pizza delivered to the trailer house of one of the co-defendants. When the pizza delivery person arrived, the other co-defendant ran up to her, put a gun to the back of her head, and robbed her of her money bag and cell phone. Evidence showed that Appellant was later given money and the cell phone taken during the robbery. Appellant was arrested during a search of the trailer house, and two cell phones were taken from her

person. When police dialed the number referenced on the pizza delivery ticket, one of the cell phones taken from Appellant rang.

After hearing the evidence and arguments, Judge Pollard bound Appellant and her co-defendants over for trial in Case No. CF-2017-486. Judge Pollard found Appellant's new crimes constituted violations of probation and revoked Appellant's seven year suspended sentences in full.

Appellant filed this appeal asserting six propositions of error:

**PROPOSITION I:**

**THE TRIAL COURT LOST JURISDICTION IN CASE NO. CF-2016-205 WHEN THE REVOCATION HEARING WAS NOT HELD WITHIN TWENTY DAYS AS REQUIRED BY STATUTE.**

**PROPOSITION II:**

**IF THIS COURT FINDS THAT THE TRIAL COURT DID NOT LOSE JURISDICTION TO RULE ON THE MOTION TO REVOKE DUE TO A VIOLATION OF THE TWENTY-DAY RULE, THE WAIVER OF THE TWENTY-DAY RULE WAS INVALID BECAUSE IT WAS NOT KNOWINGLY AND VOLUNTARILY ENTERED.**

**PROPOSITION III:**

**THE STATE FAILED TO PROVE BY A PREPONDER-ANCE OF THE EVIDENCE THAT MS. QUILLEN VIOLATED THE TERMS OF HER PROBATION BY COMMITTING THE NEW CRIMES OF FIRST DEGREE ROBBERY OR CONSPIRACY TO COMMIT A FELONY.**

**PROPOSITION IV:**

**THE STATE FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT MS. QUILLEN VIOLATED THE TERMS OF HER PROBATION BY COMMITTING THE NEW CRIMES OF FIRST DEGREE ROBBERY OR CONSPIRACY TO COMMIT A FELONY.**

**PROPOSITION V:**

**MS. QUILLEN WAS DENIED HER RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATIONS OF THE 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ART. II, §§ 7, 9, AND 20, OF THE OKLAHOMA CONSTITUTION.**

**PROPOSITION VI:**

**THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REVOKED MS. QUILLEN'S SUSPENDED SENTENCE OR, IN THE ALTERNATIVE, THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REVOKED MS. QUILLEN'S SUSPENDED SENTENCE IN FULL.**

**ANALYSIS**

The relief Appellant seeks in Propositions I, II, and V would be ineffectual and thus those propositions are rendered moot. Even if the District Court lost jurisdiction to conduct the revocation hearing in Case No. CF-2016-205, the same alleged defects concerning the twenty day rule, 22 O.S.Supp.2016, § 991b(A), are not present in Case No. CF-2015-817. The District Court thus clearly had jurisdiction to revoke all nine of Appellant's seven year suspended sentences

in Case No. CF-2015-817. Because the sentences in both cases have been ordered to run concurrently, rather than restoring the suspension of Appellant's sentence in Case No CF-2016-205, Appellant can discharge her sentence and all other obligations in Case No. CF-2016-205 at the same time she is serving the revoked suspended sentences in Case No. CF-2015-817. Therefore, Appellant's Propositions I, II, and V should be considered moot and are denied.

In Proposition III, Appellant argues there is insufficient evidence to show the robbery was committed through the use of force because the victim never mentioned any touching, forceful or otherwise. Appellant also argues there is insufficient evidence to show the robbery was committed through the use of fear because the victim never testified she was sufficiently afraid. In Proposition IV, Appellant argues the State failed to prove she had committed the crime of Conspiracy to Commit a Felony either because there was insufficient evidence to show she entered an agreement with her co-defendants, or because she was not a party to the agreement as her actions were forced.

At a revocation hearing, the prosecution need only show by a

preponderance of the evidence that the terms of the accused's suspension had been violated. *Fleming v. State*, 1988 OK CR 162, ¶ 4, 760 P.2d 206, 207. All sufficiency of the evidence claims are reviewed under the *Spuehler* standard. *Hogan v. State*, 2006 OK CR 19, ¶ 21, 139 P.3d 907, 919, citing *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. This Court thus reviews Appellant's appeal of the sufficiency of the revocation hearing evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the alleged violations of probation by a preponderance of the evidence. *Id.* The decision of the District Court to revoke a suspended sentence in whole or in part based upon the evidence presented 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.

The evidence presented at Appellant's revocation hearing showed that Appellant and two co-defendants planned to rob a person delivering pizza. Appellant placed the call for the pizza and, when the delivery person arrived, one of the co-defendants ran up, put a gun to the back of the delivery person's head, and demanded her

money. Putting a gun to the back of the delivery person's head was more than sufficient evidence of touching the victim for a rational trier of fact to find that the robbery was committed by the use of force and was committed through the use of fear. There is also more than sufficient evidence for a rational trier of fact to find by a preponderance of the evidence that Appellant participated in the incident and conspired with the co-defendants both before and after the robbery.

Propositions III and IV are denied.

In Proposition VI, Appellant is arguing that she did not have a major role in the commission of First Degree Robbery By Force and Fear, and that no evidence was presented to show she had committed any other violations of her probation. Again, 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, supra*. 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. Judge Pollard heard evidence of Appellant's participation in a violent crime. His decision to revoke Appellant's concurrent

seven year suspended sentences in full cannot be considered an abuse of discretion. *Jones, supra*. Proposition VI is denied.

## **DECISION**

The order of the District Court of Pontotoc County revoking Appellant's concurrent seven year suspended sentences in full in Case Nos. CF-2015-817 and CF-2016-205 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 GREGORY D. POLLARD, SPECIAL JUDGE

### **APPEARANCES IN THE DISTRICT COURT**

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**OPINION BY:** KUEHN, V.P.J.

LEWIS, P.J.: CONCUR  
LUMPKIN, J.: CONCUR IN RESULTS  
HUDSON, J.: CONCUR  
ROWLAND, J.: CONCUR  
RA/F