

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

**JERRY WAYNE LANDS,**

**Appellant,**

**v.**

**STATE OF OKLAHOMA,**

**Appellee.**

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**NOT FOR PUBLICATION**

**No. RE-2018-234**

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

MAY 30 2019

**S U M M A R Y O P I N I O N**

**JOHN D. HADDEN  
CLERK**

**KUEHN, VICE-PRESIDING JUDGE:**

On March 7, 2008, Appellant Lands, represented by counsel, entered a negotiated plea of no contest to a charge of Possession of a Controlled Dangerous Substance (Methamphetamine) After Former Conviction of a Felony in Pittsburg County Case No. CF-2007-420. Lands was sentenced to ten (10) years, all suspended, subject to terms and conditions of probation. Between May of 2008 and March of 2009, at least five (5) applications to revoke were filed alleging Lands had violated his terms and conditions of probation sufficient to warrant revocation of his suspended sentence. On December 5, 2008, Lands was charged with Count 1, Possession of Methamphetamine After Former Conviction of a Felony and Count 2, Failure to Display Center High Mounted Stop (misdemeanor) in Pittsburg County Case No. CF-

2008-526. On April 13, 2009, the district court revoked five (5) years of Lands' suspended sentence in Pittsburg County Case No. CF-2007-420.

On January 27, 2010, Lands entered a guilty plea in Pittsburg County Case No. CF-2008-526 and was sentenced to ten (10) years for Count 1, with all but the first five (5) years suspended. On October 17, 2011, the State filed a Motion to Revoke Lands' remaining suspended sentence in Case No. CF-2007-420. That motion was dismissed on October 28, 2011. From September 6, 2013 to March 6, 2014, the State filed three additional revocation applications in both cases. It appears that all of these motions were subsequently dismissed.

On October 26, 2017, the State filed an Application to Revoke Lands' suspended sentences in Pittsburg County Case Nos. CF-2007-420 and CF-2008-526, alleging Lands was in possession of a stolen vehicle on September 29, 2017, as charged in Pittsburg County Case No. CF-2017-694<sup>1</sup>.

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<sup>1</sup> On March 21, 2018, the State of Oklahoma dismissed Pittsburg County Case No. CF-2017-694.

At the conclusion of a revocation hearing held July 11, 2017, the District Court of Pittsburg County, the Honorable Michael W. Hogan, Special Judge, revoked Lands' suspended sentences in full. From this Judgment and Sentence, Lands appeals, raising the following propositions of error:

1. The trial judge abused his discretion by refusing to grant a continuance for Mr. Lands to hire counsel;
2. No valid waiver of the twenty-day requirement exists; therefore, the court lost jurisdiction to revoke;
3. The evidence was insufficient to support the allegations in the original motion to revoke and the amended motion to revoke; and
4. The revocation of Mr. Lands' entire remaining sentence in CF-2007-420 and the entire suspended sentence in CF-2008-526 was excessive under the facts of this case and should be favorably modified.

The revocation of Lands' suspended sentences is **AFFIRMED**.

The scope of review in a revocation appeal is limited to the validity of the revocation order executing the previously imposed sentence. *Tilden v. State*, 2013 OK CR 10, ¶¶ 3-4, 306 P.3d 554, 555-556; Rule 1.2(D)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019); *Nesbitt v. State*, 2011 OK CR 19, ¶ 5, 255

P.3d 435, 437; *Grimes v. State*, 2011 OK CR 16, ¶ 17, 251 P.3d 749, 755, modified by *Sears v. State*, 2019 OK CR 8, \_\_\_ P.3d \_\_\_. We examine the basis for the factual determination and consider whether the court abused its discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565; *Crowels v. State*, 1984 OK CR 29, ¶ 6, 675 P.2d 451, 453; *Sparks v. State*, 1987 OK CR 247, ¶ 5, 745 P.2d 751, 752.

Lands argues at Proposition I that Judge Hogan abused his discretion in denying the request for a continuance to allow Lands to hire private counsel. We disagree. The request for the continuance was made the day of the revocation hearing, more than a month after the hearing had been scheduled. At no time, prior to the hearing, did Lands advise the court that he wished to hire private counsel; he made no attempt to hire private counsel; and he presented the court with no valid reason for seeking to discharge his court-appointed counsel. It appears from the record that the actual reason for seeking delay was Lands' mistaken belief that he had already discharged his suspended sentence in Case No. CF-2007-420. Absent some valid reason that appointed counsel should have been discharged the day of the hearing, or any resulting prejudice, Lands has failed to show

that the trial court's denial of his request for a continuance to hire private counsel was an abuse of discretion. *Lamar v. State*, 2018 OK CR 8, ¶ 34, 419 P.3d 283, 293.

Lands next claims that the record contains no valid waiver of the "20-day rule", and the trial court therefore lacked jurisdiction to revoke his suspended sentence. *See*, 22 O.S.Supp.2016, § 991b(A). We find no merit in this claim. Lands does not dispute that the record contains two court minutes indicating that he waived his right to have his revocation hearing conducted within twenty days of his entry of a plea to the State's revocation application. Rather, his claim is that the waiver is invalid because he was not represented by counsel at the time of the waiver. We find no controlling authority, and Lands cites none, for the proposition that waiver of the 20-day rule is only valid if the defendant is represented by counsel at the time of the waiver. Nothing in this appeal record supports a finding that Lands, appearing *pro se* at the entry of his plea and at his subsequent hearing, did not knowingly and voluntarily waive the 20-day time limitation. This proposition is denied.

At Proposition III, Lands argues the State presented insufficient evidence to prove that he committed the charged offense of Possession of a Stolen Vehicle, and therefore presented insufficient evidence to warrant revocation of his suspended sentences. He argues the evidence was weak, and cites to the subsequent dismissal of the criminal charge which served as the basis of the State's revocation application in support of this claim.

Alleged violations of conditions of a suspended sentence need only be proven by a preponderance of the evidence. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322; *Fleming v. State*, 1988 OK CR 162, ¶ 4, 760 P.2d 206, 207; *Lewis v. State*, 1987 OK CR 138, ¶ 9, 739 P.2d 534, 535. Credibility of the witnesses and the weight given evidence is left to the trier of fact. *Rutan v. State*, 2009 OK CR 3, ¶ 49, 202 P.3d 839, 849; *Bland v. State*, 2000 OK CR 11, ¶ 29, 4 P.3d 702, 714. A review of the record in this matter reveals that competent and sufficient evidence was presented at the revocation hearing for the court to find, by a preponderance of the evidence, that Lands violated the terms and conditions of his probation sufficient to warrant revocation of his suspended sentences. Proposition 3 is denied.

We find no merit in Proposition IV wherein Lands alleges that revocation of his suspended sentences in full was error. Based on the record presented in this matter, specifically the repeated and numerous probation violations which appear throughout Lands' record, we find no merit in this claim. This Court has repeatedly held that violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden*, 2013 OK CR 10, ¶ 10, 306 P.3d at 557; *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d 744, 745. We find no abuse of discretion in Judge Hogan's decision to revoke Lands' suspended sentences in full.

### **DECISION**

The order of the District Court of Pittsburg County revoking Appellant's suspended sentences in Case Nos. CF-2007-420 and CF-2008-526 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 delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PITTSBURG COUNTY  
THE HONORABLE MICHAEL W. HOGAN, SPECIAL JUDGE

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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