

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CAMERON CLEO GIVENS,

) **NOT FOR PUBLICATION**

Appellant,

v.

) **No. RE-2018-249**

THE STATE OF OKLAHOMA,

) **FILED**

Appellee.

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

MAY 16 2019

SUMMARY OPINION

**JOHN D. HADDEN,
CLERK**

LUMPKIN, JUDGE:

Appellant appeals from the revocation of his suspended sentence in Oklahoma County District Court Case No. CF-2003-2422, by the Honorable Glenn M. Jones, District Judge.

On February 2, 2005, Appellant entered a plea of guilty to four counts of Rape in the Second Degree, in violation of 21 O.S. §§ 1111, 1114 (Counts 1-4), and three counts of Forcible Oral Sodomy, in violation of 21 O.S. §§ 886, 888 (Counts 5-7) in Case No. CF-2003-2422. Appellant was convicted and sentenced to fifteen years imprisonment each for Counts 1-4, with all but the first ten years suspended; and twenty years imprisonment each for Counts 5-7,

with all but the first ten years suspended. Judge Jones ordered the sentences to be served concurrently.

On May 2, 2017, the State filed an Amended Application to Revoke Suspended Sentence alleging Appellant failed to report to his probation officer; failed to comply with the Sex Offender Registration Act; committed the new crimes of Using a Vehicle to Facilitate the Intentional Discharge of a Firearm and Pointing a Firearm at Another as alleged in Oklahoma County District Court Case No. CF-2016-9187; and committed the new crimes of Felon in Possession of a Firearm, Obstructing an Officer, and Driving While Privilege Suspended as alleged in Oklahoma County District Court Case No. CF-2017-789. Following a revocation hearing, Judge Jones revoked Appellant's remaining suspended sentence in full.

In his first proposition Appellant argues he was not provided an adequate opportunity in this revocation to request discovery regarding Officer O'Connor's testimony.

Discovery is not required without a proper request having been made. 22 O.S. § 2001(A)(1). Assuming arguendo Appellant is entitled to discovery in a revocation hearing, Appellant had more than sufficient notice of Officer O'Connor's potential testimony to trigger

the requirement he request discovery. *Id; Bourland v. State*, 1993 OK CR 14, ¶ 5, 848 P.2d 580, 581. Appellant's revocation counsel admitted Appellant was given notice of Officer O'Connor's potential testimony when Officer O'Connor was endorsed as a witness in the underlying new crimes listed in the State's May 2, 2017, Application to Revoke Suspended Sentence. Revocation counsel also conceded she was given notice by the State on January 31, 2018, Officer O'Connor was a potential witness.

Appellant has not established he was entitled to discovery. Regardless, he received adequate notice of the State's evidence and failed to request discovery. Proposition I is without merit.

Appellant claims in Proposition II it was improper to admit, and rely on, the Case No. CF-2016-9187 preliminary hearing transcript to support this revocation. He argues because the State did not establish the transcript "bears substantial guarantees of trustworthiness" pursuant to *Hampton v. State*, 2009 OK CR 4, ¶ 21, 203 P.2d 179, 187, its admission was an abuse of discretion. Further, Appellant maintains, based on the holding in *Hampton*, a court cannot revoke a suspended sentence relying entirely on hearsay

evidence. The authority provided for this statement is *Montemayor v. State*, 1988 OK CR 285, ¶¶ 2-4, 766 P.2d 1000, 1001.

Hampton and *Montemayor* do not apply in this case. This Court addresses Appellant's situation in *Wortham v. State*, 2008 OK CR 18, 188 P.3d 201. In *Wortham* the appellant objected to a preliminary hearing transcript being introduced and relied upon at the revocation hearing. This Court held in *Wortham* that the relaxed revocation due process standards, 22 O.S. § 991b, and *Montemayor* were not violated when a transcript of a previous judicial hearing is admitted into evidence at a revocation hearing, without requiring the State to prove the unavailability of the witnesses, so long as the defendant was allowed to confront and cross-examine the witnesses at the previous judicial hearing. *Id.* at ¶¶ 10, 15. In this case, Appellant was provided the opportunity to confront and cross-examine the witnesses at the Case No. CF-2016-9187 preliminary hearing.

Moreover, the State did not need the probation violations based on the Case No. CF-2016-9187 preliminary hearing to revoke Appellant. The probation violations based on the new crimes alleged in Case No. CF-2017-789 alone were proven at this revocation hearing and sufficient to revoke Appellant's remaining suspended

sentence in full. Appellant has not established the trial court's decision to admit and rely on the Case No. CF-2016-9187 preliminary hearing transcript was an abuse of discretion. Proposition II is without merit.

A suspended sentence is a matter of grace. *Hagar v. State*, 1999 OK CR 35, ¶ 8, 990 P.2d 894, 898; *Demry v. State*, 1999 OK CR 31, ¶ 12, 986 P.2d 1145, 1147. The State must only prove one violation of probation in order to revoke Appellant's suspended sentence in full. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557 (citing *McQueen v. State*, 1987 OK CR 162, ¶ 2, 740 P.2d 744, 745). The decision to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and such decision will not be disturbed absent an abuse thereof. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. In this case, the State filed a petition setting forth the grounds for the revocation, and competent evidence justifying the revocation was presented to the trial court establishing the requirements necessary to revoke Appellant's suspended sentence in full. 22 O.S. § 991b(A). Appellant has not shown an abuse of discretion. *Jones, supra*.

DECISION

The revocation of Appellant's suspended sentences in Oklahoma County District Court Case No. CF-2003-2422 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 GLENN M. JONES,
DISTRICT JUDGE**

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OPINION BY: LUMPKIN, J.
LEWIS, P.J.: Concur
KUEHN, V.P.J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

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