

participation in a mental health court program. The application alleges Appellant failed to attend group counseling sessions; tested positive for alcohol and illegal drugs; failed to comply with treatment programs; and committed the new crimes of Driving Under the Influence, Possession of a Controlled Dangerous Substance, and Possession of Stolen Property in Rogers County. Following a December 29, 2017, hearing on the State's application, the Honorable George W. Butner, District Judge, terminated Appellant's participation in mental health court and sentenced Appellant to seven years imprisonment. Appellant appeals this termination.

In Proposition I, Appellant argues the trial court's denial of credit for time served was an abuse of discretion and warrants relief. Relying on the Oklahoma Community Sentencing Act, Appellant argues the trial court was required to grant him credit for time served. *See* 22 O.S.Supp.2018, §§ 988.19(I) and 988.20(A); 22 O.S.2011, § 988.21. Appellant was not sentenced pursuant to the Oklahoma Community Sentencing Act and, as a result did not have a community sentence revoked in this case. *Id.* Therefore, the Oklahoma Community Sentencing Act has no bearing in this case on the termination of Appellant's participation in the Seminole County

Anna McBride Court Program pursuant to 22 O.S.Supp.2014, § 972. Appellant has established no right to credit for time served in this case. As a result, this proposition is without merit.

As Proposition II does not challenge the validity of his termination order, Proposition II is not properly before this Court and must be denied. The scope of review of a mental health court termination proceeding is limited to the validity of the termination order. *Tate v. State*, 2013 OK CR 18, ¶ 13, 313 P.3d 274, 280.¹ The arguments made by Appellant in Proposition II have no bearing on whether he violated his Anna McBride Performance Contract or whether his violation would justify the District Court ordering his participation in mental health court being terminated. This proposition is without merit.

In his third proposition of error Appellant argues this termination was an abuse of discretion because the trial court did

¹ The procedure to be followed in an appeal of the termination of participation in a mental health court is the same as that for appeal of termination from Drug Court. *Tate v. State*, 2013 OK CR 18, ¶ 21, 313 P.3d 274, 281. Pursuant to this Court's Rule 1.2(D)(6) the procedure for appealing termination from Drug Court is the same as an appeal from the acceleration of a Deferred Sentence. Rule 1.2(D)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019).

not consider or attempt additional sanctions prior to termination.² Appellant argues Judge Butner should have chosen a “more just result” by employing further sanctions. Appellant failed to comply with his mental health court plea agreement by repeatedly failing and refusing to follow and comply with mental health court rules and directives. The record establishes Appellant attended every available treatment facility in this state without success. While in mental health court Appellant was repeatedly violent while in treatment and committed new crimes while in the community.

The decision to revoke or terminate from Mental Health Court lies within the discretion of the mental health court judge. *Tate*, 2013 OK CR 18, ¶ 28, 313 P.3d at 282. It was within Judge Butner’s discretion to determine that instead of sanctions Appellant’s conduct requires revocation from the program. 22 O.S.Supp.2014, § 472(F). Judge Butner found Appellant was a danger to himself and to others while in mental health court. Proposition III is without merit.

An abuse of discretion is any unreasonable or arbitrary action

² In his third proposition of error Appellant relies on the language in 22 O.S.2011, § 471.7(E), which is the Oklahoma Drug Court Act. However, unlike Appellant’s Proposition II, citation to the incorrect statutory authority is not fatal to Proposition III because substantially similar language appears in the Anna McBride Act. 22 O.S.Supp.2014, § 472(F).

taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Tate*, 2013 OK CR 18, ¶ 28, 313 P.3d at 282-283. Appellant has not shown Judge Butner abused his discretion by terminating Appellant's participation in mental health court and revoking his suspended sentence. Appellant has not established that this termination was clearly against the facts in this case. *Id.*

DECISION

The termination of Appellant's participation in the Seminole County Anna McBride Court Program in Seminole County District Court Case No. CF-2015-225 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.

**TERMINATION APPEAL FROM THE DISTRICT COURT
OF SEMINOLE COUNTY, THE HONORABLE
GEORGE W. BUTNER, DISTRICT JUDGE**

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TERMINATION HEARING**

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OPINION BY: KUEHN, V.P.J.

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR

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