

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

**CHRISTOPHER CHARLES
DOWNUM,**

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2018-630

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

JUN 20 2019

**JOHN D. HADDEN
CLERK**

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

HUDSON, JUDGE:

On July 14, 2017, Appellant Downum, represented by counsel, entered a plea of *nolo contendere* to a charge of Malicious Injury to Property as charged in McIntosh County Case No. CM-2017-317. Downum was sentenced to one (1) year in the McIntosh County jail, all suspended, subject to terms and conditions of probation. On October 18, 2017, the State filed a Motion to Revoke Downum's suspended sentence alleging he committed the new offenses of Public Intoxication and Obstructing An Officer as alleged in McIntosh County Case No. Case No. CM-2017-457. At the conclusion of a combined revocation hearing and preliminary hearing held May 31, 2017, the District Court of McIntosh County, the Honorable James D. Bland, District Judge,

revoked ten (10) days of Downum's suspended sentence in Case No. CM-2017-317. From this Judgment and Sentence, Downum appeals, raising the following propositions of error:

1. The trial court used the wrong legal standard in revoking Downum's suspended sentence;
2. The evidence was insufficient to show that Downum committed the acts of public intoxication and obstructing an officer; and
3. The sentence imposed by the trial court is excessive.

The revocation of Downum's suspended sentence 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. 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.

Downum argues at Proposition I that Judge Bland used the wrong standard in revoking his suspended sentence by “conflating” the burden of proof for revoking a suspended sentence with the burden of proof for a preliminary hearing. This argument dovetails with the argument presented at Proposition II wherein Downum argues that regardless of what standard of proof was used, there was insufficient evidence to warrant revocation of his suspended sentence. We disagree.

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. Downum presents no evidence, and we find none in the appeal record, supporting a claim that Judge Bland did not use the proper

standard in revoking Downum's suspended sentence. 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 Downum violated the terms and conditions of his probation sufficient to warrant revocation of his suspended sentence. Propositions I and II are denied.

We also find no merit in Proposition III wherein Downum alleges that revocation of his suspended sentence was error. We note first that Downum cites no authority for his claim that revocation of ten days of his sentence is excessive. His argument that the State has an interest in reducing the prison population and the financial burden incarceration imposes on Oklahoma taxpayers is unpersuasive. 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 Bland's decision to revoke ten days of Downum's suspended sentence.

DECISION

The order of the District Court of McIntosh County revoking ten (10) days of Appellant's suspended sentence in Case No. CM-2017-317 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 MCINTOSH COUNTY THE HONORABLE JAMES D. BLAND, DISTRICT JUDGE

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OPINION BY: HUDSON, J.:

LEWIS, P.J.: CONCUR

KUEHN, V.P.J.: CONCUR

LUMPKIN, J.: CONCUR

ROWLAND, J.: CONCUR

RA/F