

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ANTWOIN LEE WALKER,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2018-645

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 12 2019

JOHN D. HADDEN
CLERK

SUMMARY OPINION

KUEHN, VICE PRESIDING JUDGE:

Appellant, Antwain Lee Walker, appeals from the revocation in full of his six year suspended sentence in Case No. CF-2015-675 in the District Court of Canadian County, by the Honorable Paul Hesse, District Judge. On October 27, 2015, Appellant entered a plea of guilty to Count 1 – Petit Larceny, and Count 2 – Knowingly Concealing Stolen Property. He was sentenced to six months in the county jail on Count 1, and ten years with all but the first four years suspended on Count 2, with the sentences ordered to run concurrently.

On May 30, 2017, the State filed an Application to Revoke Suspended Sentence alleging that Appellant violated probation by committing the new crimes of Counts 1 and 2, Attempt to Kill Another; Count 3, Rape in the First Degree; Count 4, Attempted Rape in the First Degree; and Count 5, Petit Larceny, as charged in Canadian County District Court Case No. CF-2017-445. On June 19, 2018, the hearing on the application to revoke was held before Judge Hesse in conjunction with Appellant's sentencing hearing in Case No. CF-2017-445.¹ During the first part of the hearing, Judge Hesse considered the record in Case No. CF-2017-445 and the Pre-Sentence Investigation Report, and sentenced Petitioner in accordance with the jury's verdict to life imprisonment on Counts 1 and 2; 30 years imprisonment on Count 3; 25 years imprisonment on Count 4; and 20 years imprisonment on Count 5, with the sentences on Counts 1, 2, 3 and 5 to run concurrently and the sentence on Count 4 to run consecutively.

¹ Appellant was convicted by a jury of all five counts in Case No. CF-2017-445 on May 10, 2018.

When the revocation portion of the hearing began, the State asked Judge Hesse “to incorporate all the evidence and testimony from the trial [in Case No. CF-2017-445] and make a determination as to the application, and then sentence, if you find we’ve met our burden.” Judge Hesse asked if Appellant had any objection to that, and Appellant’s counsel responded “No, Your Honor.” Judge Hesse found Appellant had violated probation as alleged, revoked his six year suspended sentence in full, and allowed the revoked sentence to run concurrently with Appellant’s sentences on Counts 1, 2, 3 and 5 in Case No. CF-2017-445.

Appellant appeals asserting one proposition of error.

**PROPOSITION I:
THE TRIAL COURT COMMITTED REVERSIBLE ERROR
WHEN IT TOOK JUDICIAL NOTICE OF EVIDENCE
PRESENTED IN AN EARLIER HEARING.**

ANALYSIS

Appellant claims the District Court committed reversible error during his revocation hearing by taking judicial notice of the evidence used to convict him in the previous jury trial in Case No. CF-2017-445. However, Appellant agreed that his revocation hearing in this

case, No. CF-2015-675, could be held conjointly with his sentencing hearing in Case No. CF-2017-445. Therefore, the evidence before Judge Hesse that was used to sentence Appellant in Case No. CF-2017-445 was also before Judge Hesse in Appellant's conjoint revocation hearing. *Contra Linscome v. State*, 1978 OK CR 95, 584 P.2d 1349 (revocation hearing was not held in conjunction with any other hearing). Appellant acknowledged as much by declining to object when the State asked to incorporate into the revocation proceedings all of the trial evidence and testimony used to sentence Appellant. Judge Hesse did not take judicial notice of evidence and no error or abuse of discretion was committed. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565 (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).

DECISION

The order of the District Court of Canadian County revoking in full Appellant's six year suspended sentence in Case No. CF-2015-675 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 CANADIAN COUNTY
THE HONORABLE PAUL HESSE, DISTRICT JUDGE

**APPEARANCES IN THE
DISTRICT COURT**

CRAIG CORGAN
P. O. Box 2956
Oklahoma City, OK 73101
COUNSEL FOR APPELLANT

ERIC EPPLIN
Assistant District Attorney
303 North Choctaw Ave.
El Reno, OK 73036
COUNSEL FOR THE STATE

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

RA/F

**APPEARANCES ON
APPEAL**

SARAH MacNIVEN
P. O. Box 926
Norman, OK 73070
COUNSEL FOR APPELLANT

MIKE HUNTER
Attorney General of Oklahoma
THEODORE M. PEEPER
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
COUNSEL FOR THE STATE