

**ORIGINAL**



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

**JEREMY LANCE LABBY,**

**Appellant,**

**v.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

**NOT FOR PUBLICATION**

**No. RE-2018-858**

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

**AUG 15 2019**

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

**JOHN D. HADDEN  
CLERK**

**LEWIS, PRESIDING JUDGE:**

Appellant appeals from the revocation of his suspended sentence in Cherokee County District Court Case No. CF-2015-149.

In this case, Appellant was charged with Unauthorized Use of a Motor Vehicle, in violation of 47 O.S.2011, § 4-102. On December 15, 2016, Appellant entered a plea of no contest and was sentenced to three years imprisonment, with all three years suspended. On June 20, 2018, the State filed a 2<sup>nd</sup> Amended Motion to Revoke Suspended Sentence alleging Appellant committed several violations of his rules and conditions of probation including new crimes consisting of two counts of Assault and Battery on a Police Officer, as alleged in Cherokee County District Court Case No. CF-2017-51;

Theft of Property as alleged in Benton County, Arkansas District Court Case No. CR-2017-291-1; and First Degree Burglary and Resisting Arrest, as alleged in Cherokee County District Court Case No. CF-2017-758. Following a revocation hearing, the Honorable Gary Huggins, Special Judge, revoked Appellant's suspended sentence in full.

In his sole proposition, Appellant maintains revocation in full was excessive and claims this revocation order should be modified. Appellant argues this revocation was an abuse of discretion because he possessed a limited intellect and was allegedly making good faith efforts to comply. Appellant notes that he was current on his probation fees and had met with his probation officers as ordered. According to Appellant, revocation in full was an abuse of Judge Huggins's discretion. Appellant's claims are without merit.

A suspended sentence is a matter of grace. *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 a 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). Here, the State established that after being convicted and

allowed to remain in the community on probation, Appellant committed multiple probation violations including several new crimes.

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. The State filed a petition setting forth the grounds for the revocation and competent evidence justifying the full revocation was presented to the trial court. 22 O.S.Supp.2016, § 991b(A). Appellant was on probation for Unauthorized Use of a Motor Vehicle and one of the new felony crimes Appellant committed while on probation was theft of a car. While on probation, Appellant committed crimes in two states and committed several additional violations of his rules and conditions of probation. The fact that Judge Huggins could have revoked less than the full suspended sentence, and chose not to, does not establish that this revocation is an abuse of discretion. *Jones*, 1988 OK CR 20, ¶ 8, 749 P.2d at 565.

## **DECISION**

The revocation of Appellant's suspended sentence in Cherokee County District Court Case No. CF-2015-149 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 CHEROKEE COUNTY, THE HONORABLE GARY HUGGINS, SPECIAL JUDGE**

#### **APPEARANCES AT REVOCATION    APPEARANCES ON APPEAL**

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#### **OPINION BY: LEWIS, P.J.**

KUEHN, V.P.J.: Concur  
LUMPKIN, J.: Concur  
HUDSON, J.: Concur  
ROWLAND, J.: Concur

RA/F