

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

**BRANDON CHRISTOPHER
LOONEY,**

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. RE-2018-89

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

JUN 27 2019

SUMMARY OPINION

**JOHN D. HADDEN
CLERK**

ROWLAND, JUDGE:

Appellant, Brandon Christopher Looney, appeals from the revocation in full of his twenty year suspended sentence in Case No. CF-2016-143 in the District Court of Garvin County, by the Honorable Steven C. Kendall, Associate District Judge. November 1, 2017, Appellant entered a plea of nolo contendere to Assault and Battery With a Dangerous Weapon, after former conviction of a felony and was convicted and sentenced to a term of twenty years, with the sentence suspended under rules and conditions of probation.

On December 18, 2017, the State filed an application to revoke Appellant's suspended sentence alleging he violated probation by (1) failing to report, rule 3; (2) failing to notify of change of residence or allow visit by probation officer, rule 4; (3) associating or residing with convicted felons, rule 5; (4) failing a drug test on 12/13/17, rules 7 and 10; (5) possessing weapons, rule 8; and (6) being charged with five counts of possession of firearm after felony conviction, one count of possession of CDS, and one count of possession of drug paraphernalia, as charged in Garvin County District Court Case No. CF-2017-441, rule 9. On January 3, 2018, the hearing on the motion to revoke was held before Judge Kendall. After hearing evidence and arguments, Judge Kendall found that Appellant had violated probation by committing all of the alleged violations of probation and revoked Appellant's twenty year suspended sentence in full.

At the revocation hearing, the State first called Jared Martinez ("Martinez"), a deputy with the Garvin County Sheriff's Department. Martinez testified that, on December 12, 2017, he arrived at 703 N. Chickasaw in Pauls Valley to serve an arrest warrant on Mr. Jason

Black. Martinez approached the house and, when he heard yelling and screaming, he looked through a window to find Mr. Black injecting a clear liquid into Appellant's arm. This event prompted Martinez to seek and obtain a search warrant. Later in the day on December 12, 2017, Martinez returned to the residence to execute the search warrant and detained Mr. Black, Ms. Heather Tucker, and Appellant. In Mr. Black and Ms. Tucker's bedroom, Martinez discovered a .44 magnum revolver, a 9mm handgun, a pellet gun, two BB guns, and a "break over air gun." Also in Mr. Black and Ms. Tucker's room were various illicit drugs and paraphernalia.

Martinez then walked into Appellant's bedroom, which was connected to the other bedroom by a bathroom. Appellant's bedroom was where Martinez had witnessed Mr. Black injecting the clear liquid into Appellant's forearm. Clothing was scattered on the floor, and Appellant acknowledged the clothing was his. In that room, Martinez found a metal and wood smoking device with a burnt substance on the inside that field tested positive for marijuana, a plastic bag containing about .04 grams of what field tested positive for methamphetamine, and a needle and syringe

containing a clear substance that field tested positive for methamphetamine.

The State then called Chaz Pyle ("Pyle"), Appellant's probation officer. Pyle testified that Appellant reported to the probation office on November 11, 2017, for his initial intake and was told to report again on December 8, 2017. Pyle testified Appellant failed to report on December 8 and did not call in to reschedule that meeting. Pyle testified that after Appellant was arrested during execution of the search warrant, Appellant admitted he had moved in with Mr. Black and Ms. Tucker to help them pay bills and had not reported the change of address to the probation office. Pyle testified he also supervised Mr. Black's probation and that Mr. Black was a convicted felon. Pyle testified that on December 13, 2017, Appellant failed a drug test for marijuana and opiates. Appellant admitted that he had smoked marijuana and took some Tylenol 3. Pyle testified that Appellant had also violated probation by being charged in Garvin County District Court Case No. CF-2017-441 with five counts of felonious possession of a firearm.

After Pyle's testimony, the State rested. Appellant demurred to the evidence and presented argument. After the State's argument, Judge Kendall overruled the demurrer to the evidence. Appellant announced that he was not going to present any evidence and rested. Judge Kendall found the State had proven each of the alleged violations of probation and revoked his twenty year suspended sentence in full.

Appellant appeals asserting four propositions of error:

PROPOSITION I:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S DEMURRER TO THE WEAPONS-RELATED ALLEGATIONS IN THE STATE'S MOTION TO REVOKE, RESULTING IN A DECISION TO REVOKE IN FULL THAT WAS IMPROPERLY INFLUENCED BY INVALID FACTORS.

PROPOSITION II:

THE TRIAL COURT'S DECISION TO REVOKE IN FULL WAS AN ABUSE OF DISCRETION IN LIGHT OF THE COURT'S FAILURE AND/OR REFUSAL TO CONSIDER AVAILABLE LESSER OPTIONS AVAILABLE TO IT.

PROPOSITION III:

REVOCATION IN FULL OF APPELLANT'S TWENTY-YEAR SUSPENDED SENTENCE WAS EXCESSIVE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

**PROPOSITION IV:
THE ACCUMULATION OF ERROR IN THIS CASE
DEPRIVED MR. LOONEY OF DUE PROCESS OF LAW
IN VIOLATION OF THE FIFTH AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND ARTICLE II, § 7 OF THE
OKLAHOMA CONSTITUTION.**

ANALYSIS

In Proposition I, Appellant argues that Judge Kendall erred by denying his demurrer to the evidence of the weapons related violations because none of the weapons were found in the bedroom Appellant allegedly occupied and there was no evidence Appellant actually knew there were weapons in the other bedroom. Appellant asks that Judge Kendall's decision to revoke his twenty year suspended sentence in full be reversed and remanded for sentencing without consideration of the alleged weapons violations.

As Appellant acknowledges, he is a convicted felon and a person serving a term of probation. As such, he is prohibited from having pistols, shotguns, rifles or any other dangerous or deadly firearm at the residence where he resides, regardless of actual possession or control. 21 O.S.Supp.2014, § 1283(A), (C). Appellant argues he should be allowed the defense of knowledge of the

presence of a firearm, as provided in OUJI-CR 6-40. However, again conspicuously absent from that defense is a requirement that the defendant must have knowledge of the presence of a firearm in his residence. OUJI-CR 6-40.

Alleged violations of conditions of a suspended sentence need be proven only by a preponderance of the evidence. *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. 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. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. Appellant hasn't established that Judge Kendall abused his discretion by finding the weapons violations had been established by a preponderance of the evidence, and by considering those weapons violations in determining the amount of the suspended sentence to revoke. Proposition I is denied.

In Proposition II, Appellant argues Judge Kendall failed and refused to consider other available options besides revocation in full. Appellant correctly notes that Judge Kendall revoked his suspended sentence in full without much elaboration or

explanation. But, Appellant hasn't established that Judge Kendall failed or refused to consider other options. *Jones, supra*. Proposition II is denied.

In Proposition III, Appellant claims the revocation in full of his twenty year suspended sentence was excessive under the facts and circumstances of this case. One of Appellant's arguments is again that the most serious alleged violations, the weapons related violations, were not adequately proven. Appellant was required to know his rules and conditions of probation and whether he was in compliance. After he was placed on probation, Appellant almost immediately began ignoring his rules and conditions of probation. Appellant hasn't established Judge Kendall erred or abused his discretion by finding Appellant was not properly suited for a suspended sentence. *Jones, supra*. Proposition III is denied.

Finally, this Court has repeatedly held that a cumulative error argument has no merit when this Court fails to sustain any of the other errors raised by Appellant. *Williams v. State*, 2001 OK CR 9, ¶ 127, 22 P.3d 702, 732. Proposition IV is denied.

DECISION

The order of the District Court of Garvin County revoking in full Appellant's twenty year suspended sentence in Case No. CF-2016-143 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 GARVIN COUNTY,
THE HONORABLE STEVEN C. KENDALL,
ASSOCIATE DISTRICT JUDGE**

APPEARANCES IN THE DISTRICT COURT

PHILLIP N. MORTON
Attorney At Law
120 N. Forrest Ave.
P. O. Box 818
Stratford, OK 74872
COUNSEL FOR APPELLANT

COREY MINOR
Assistant District Attorney
Garvin County Courthouse
201 W. Grant St., Room 15
Pauls Valley, OK 73075
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

JAMES H. LOCKARD
Deputy Division Chief
Oklahoma Indigent Defense
System
P. O. Box 926
Norman, OK 73070
COUNSEL FOR APPELLANT

MIKE HUNTER
Attorney General of Oklahoma
TESSA L. HENRY
Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
COUNSEL FOR THE STATE

OPINION BY: ROWLAND, J.

LEWIS, P.J.: Concur

KUEHN, V.P.J.: Concur

LUMPKIN, J.: Concur

HUDSON, J.: Concur