

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

GALE DEAN MITCHELL,)	NOT FOR PUBLICATION
Appellant,)	
v.)	Case No. RE-2019-42
THE STATE OF OKLAHOMA,)	FILED
Appellee.)	IN COURT OF CRIMINAL APPEALS
		STATE OF OKLAHOMA
		JAN 30 2020
		JOHN D. HADDEN
		CLERK
		<u>SUMMARY OPINION</u>

ROWLAND, JUDGE:

Appellant appeals from the revocation of his suspended sentence in Jackson County District Court Case No. CF-2012-206. In this case he entered a plea of no contest on April 22, 2013, to Knowingly Concealing Stolen Property, in violation of 21 O.S.2011, § 1713. He was convicted and sentenced to five years imprisonment, with all but the first year suspended. Appellant was ordered to pay \$2,500.00 in restitution and \$40.00 a month in district attorney supervision fees.

On February 9, 2016, the State filed a Motion to Revoke Suspended Sentence alleging Appellant failed to pay district attorney

supervision fees and make restitution payments as ordered. The State filed a Supplemental Motion to Revoke Suspended Sentence on December 4, 2017, that added an allegation that Appellant committed the new crime of Domestic Assault and Battery by Strangulation. Following a revocation hearing, the Honorable Clark Huey, Associate District Judge, sustained the State's supplemental motion and revoked Appellant's remaining suspended sentence in full.

Judge Huey filed his original Order Revoking Suspended Sentence with the clerk of the trial court on January 16, 2019, which stated Appellant was revoked for failing to pay restitution as ordered. On June 7, 2019, the trial court filed an Amended Order Revoking Suspended Sentence which corrected the grounds given for revocation to include his finding that the State also proved at the revocation that Appellant violated the terms of his suspended sentence by committing the crime of Domestic Assault & Battery by Strangulation.

On July 5, 2019, the State tendered a Motion to Supplement the Record with the Clerk of this Court seeking to include in the appeal record the trial court's June 7, 2019, Amended Order

Revoking Suspended Sentence. The State's Motion to Supplement the Record on Appeal is **GRANTED** and the tendered motion is ordered to be filed by the Clerk of this Court. Rule 3.11(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020).

Appellant argues the trial court abused its discretion when it failed to make specific findings regarding whether or not Appellant's failure to meet financial obligations was willful. Appellant's argument relies upon *Winbush v. State* and *Conroy-Perez v. State*. *Winbush v. State*, 2018 OK CR 38, 433 P.3d 1275; *Conroy-Perez v. State*, 2019 OK CR 5, 440 P.3d 64. This Court held that:

Once the State has met this burden, the burden shifts to the probationer to show that the failure to pay was not willful, or that Appellant has made a good faith effort to make restitution. If the probationer presents evidence to show non-payment was not willful, the hearing court must make a finding of fact regarding the probationer's ability to pay.

Conroy-Perez, 2019 OK CR 5, ¶ 11, 440 P.3d at 67 (internal citations omitted). Appellant maintains the trial court's January 16, 2019, Order Revoking Suspended Sentence failed to include adequate findings of fact regarding his ability to pay.

At the conclusion of the revocation hearing Judge Huey stated "All right. The court will find that the State has met its burden of

proof. The State's *supplemental* motion to revoke will be granted."(emphasis added). In the trial court's initial revocation order, filed with the trial court clerk on January 16, 2019, Judge Huey stated Appellant was revoked for "failing to pay restitution as ordered." In the amended revocation order, filed with the trial court clerk on June 7, 2019, the trial court added a finding that Appellant also violated his probation when he "committed the crime of Domestic Assault and Battery by Strangulation on December 3, 2017."

The State must only prove one violation of probation in order to revoke Appellant's 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). Appellant's failures to pay were not the only probation violations alleged and proven. The supplemental motion to revoke contained an additional violation alleging Appellant committed the new crime of domestic assault and battery. The trial court found that the State proved by a preponderance of the evidence that Appellant committed domestic assault and battery when he physically prevented his wife from leaving their house during an argument. See *Hagar v. State*, 1999 OK CR 35, ¶ 12, 990 P.2d 894, 898. Because the State alleged and proved

a separate probation violation, Appellant's arguments regarding violations based on his failure to meet financial obligations are without merit. *Id.*

A suspended sentence is a matter of grace. *Hagar*, 1999 OK CR 35, ¶ 8, 990 P.2d at 898; *Demry v. State*, 1999 OK CR 31, ¶ 12, 986 P.2d 1145, 1147. 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. Appellant has not shown an abuse of discretion. *Id.*

DECISION

The revocation of Appellant's suspended sentence in Jackson County District Court Case No. CF-2012-206 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF
JACKSON COUNTY, THE HONORABLE CLARK HUEY,
ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT
REVOCATION**

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OPINION BY: ROWLAND, J.

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

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