

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

MARK DONOVAN PEMBERTON, )  
Appellant, ) NOT FOR PUBLICATION  
v. )  
THE STATE OF OKLAHOMA, ) No. RE-2019-619  
Appellee. )  
SUMMARY OPINION )  
FILED  
IN COURT OF CRIMINAL  
STATE OF OKLAHOMA  
JUL 30 2020

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STATE OF OKLAHOMA

JUL 30 2020

JOHN D. HADDEN  
CLERK

**LUMPKIN, JUDGE:**

Appellant appeals from the revocation of his suspended sentence in Cleveland County District Court Case No. CF-2017-246. On August 3, 2018, Appellant entered a plea of guilty to Endangering Others While Eluding/Attempting to Elude a Police Officer (Count 1) and Possession of a Stolen Vehicle (Count 3). Appellant was convicted and the Honorable Michael Tupper, District Judge, sentenced Appellant pursuant to a plea agreement to fifteen years imprisonment for each count, with all fifteen years suspended and the first two years served under the supervision of the community sentencing program.

On March 27, 2019, the State filed an amended motion to revoke Appellant's suspended sentence alleging Appellant failed to make assorted ordered payments, failed to appear repeatedly, complete skills training, complete community service, submit four drug tests, reside in a sober living residence, and attend cognitive behavior education; and committed the new crimes of Receiving Stolen Property (Count 1) and Burglary (Count 2) as alleged in City of Norman Police Department case number 19-21662.<sup>1</sup> Following an August 5, 2019, revocation hearing, the Honorable Michael Tupper, District Judge, revoked Appellant's suspended sentence in full.

Appellant's Proposition I is not properly presented as part of the appeal of the revocation of his suspended sentence. He is objecting because the trial court did not order him to undergo a Level of Services Inventory prior to his plea of guilty and sentencing. Appellant is challenging the validity of his predicate conviction. Any attempt to appeal his Judgment and Sentence must be pursued through the procedures governing certiorari appeals. *Tilden v. State*, 2013 OK CR 10, ¶ 4, 306 P.3d 554, 556; Rule 1.2(D)(4), *Rules of the*

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<sup>1</sup> The new crimes were prosecuted in Cleveland County District Court Case No. CF-2019-330.

disagree. Appellant ignores that the Community Sentencing Act provisions requiring credit for time served provisions are limited to the revocation or modification of a sentence imposed as a sanction. The credit for time served provided by Sections 988.19, 988.20 and 988.21 is limited to terms of imprisonment pursuant to punishment, revocation, modification or sanction. Time spent in the county jail after arrest for failing to appear and on new charges is not the revocation or modification of a sentence imposed as a sanction. Appellant has not established he is entitled to credit for the one hundred and thirty-seven days spent in the county jail after being arrested.

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. “An ‘abuse of discretion’ has been defined by this Court as a ‘clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application.’” *Walker v. State*, 1989 OK CR 65, ¶ 5, 780 P.2d 1181, 1183. In this case, the State filed a petition setting forth the grounds for the revocation, and

competent evidence justifying the revocation was presented to the trial court establishing the requirements necessary to revoke Appellant's suspended sentence in full. 22 O.S.Supp.2018, § 991b(A). Appellant has not established revocation in full was an abuse of discretion.

### **DECISION**

The revocation in full of Appellant's suspended sentence in Cleveland County District Court Case No. CF-2017-246 is **AFFIRMED**, but the matter is **REMANDED** to the District Court for modification of the revocation order to give Appellant four days credit for time served. 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 CLEVELAND COUNTY DISTRICT COURT THE HONORABLE MICHAEL TUPPER, DISTRICT JUDGE**

#### **APPEARANCES AT TRIAL**

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

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