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Appellant Jody Lynn Bailey appeals from the revocation of his suspended sentences in Oklahoma County District Court Case No. CF-2016-2879. On February 1, 2017, Appellant entered negotiated guilty pleas to four counts of Identity Theft (21 O.S.Supp.2011, § 1533.1) and two counts of Using a Computer with the Intent to Defraud (21 O.S.Supp.2013, § 1953 (A) (2)). He was sentenced to a term of imprisonment for fifteen years on each count with all but the first four years suspended. The sentences were ordered to be served concurrently. On November 1, 2018, the State filed an application to revoke the suspended sentences alleging Appellant committed the new crime of robbery.

On January 22, 2019, a hearing on the application to revoke was held before the Honorable Ray C. Elliott, District Judge. Judge Elliott granted the State's application and revoked Appellant's suspended sentences in full. On appeal, Appellant asserts the revocation was excessive. We disagree.

ANALYSIS

At a hearing where the State seeks revocation of a suspended sentence, the question is whether the suspended portion of the sentence imposed should be executed, and the court makes a factual determination as to whether the terms of the suspension order have been violated. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The violation "need be proven only by a preponderance of the evidence." *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. A trial court's decision to revoke a suspended sentence should not be overturned absent a finding of an abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7,

¶ 35, 274 P.3d 161, 170.

We do not find the decision to revoke Appellant's suspended sentences to be an abuse of discretion. *See State v. Kudron*, 1991 OK CR 92, ¶ 19, 816 P.2d 567, 570-71 ("the credibility of witnesses and the weight given their testimony is within the exclusive province of the trier of fact, who may believe or disbelieve the witnesses as it desires"). Judge Elliott's decision to revoke the suspended sentences has not been shown to be an abuse of discretion.

DECISION

The order of the District Court of Oklahoma County revoking Appellant's suspended judgments and sentences in Case No. CF-2016-2879 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 delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE**

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REVOCATION**

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

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