

ORIGINAL



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

VERNON SHAWN MILLER, JR.,)

Appellant,)

v.)

THE STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

Case No. RE-2021-1290

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 23 2023

JOHN D. HADDEN
CLERK

SUMMARY OPINION

HUDSON, VICE PRESIDING JUDGE:

Appellant, Vernon Shawn Miller, Jr., appeals from the revocation of his suspended sentences in Okfuskee County District Court Case No. CF-2016-125. On July 26, 2017, Appellant entered a negotiated plea of guilty to Kidnapping (21 O.S.Supp.2012, § 741)(Count1); Domestic Assault and Battery by Strangulation (21 O.S.Supp.2014, § 644(J))(Count 4); Possession of Firearm after Felony Conviction (21 O.S.Supp.2014, § 1283(A)(Count 5); Possession of Controlled Dangerous Substance (63 O.S.Supp.2012, § 2-402)(Count 6); and Possession of a Firearm During the Commission of a Felony (21 O.S.Supp.2012, § 1287)(Count 7).¹ He

¹ Counts 2 and 3 were dismissed pursuant to the agreement.

was sentenced to concurrent terms of ten years imprisonment on Counts 1, 5, 6, and 7; and three years imprisonment on Count 4. After Appellant completed drug offender workcamp, he filed a petition for writ of mandamus seeking his concurrent terms of imprisonment be suspended.² On November 14, 2018, Appellant's sentence was suspended in compliance with this Court's order granting relief.

On August 11, 2021, the State filed a Motion to Revoke Suspended Sentence for violating his probation as alleged in an attached Violation Report. Following a revocation hearing, the Honorable Lawrence W. Parish, District Judge, revoked Appellant's suspended sentences in full. Appellant appeals, raising seven propositions of error.

ANALYSIS

A suspended sentence is a matter of grace. *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,

² The plea form reflects, "10 years DOC w/1 year review Balance suspended upon successful completion of DOWC".

565. An “abuse of discretion” is a clearly erroneous conclusion and judgment, one clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

At the conclusion of the revocation hearing, the trial court found that Appellant had violated his probation by failing to timely complete a Batterer’s Assessment and being arrested for a new crime. 22 O.S.Supp.2019, § 991b(C)(1). Appellant’s suspended sentences were revoked in full.

In Proposition I, Appellant argues his revocation exceeded the unserved balance of his suspended sentences. Prior to revocation, “all but time served in DOC” of Appellant’s concurrent sentences was suspended. Judge Parish pronounced, “The court specifically revokes eight years and eight and one half months of his suspended sentence, notwithstanding what DOC may calculate.” It is clear Judge Parish intended to revoke Appellant’s unserved suspended sentence in full, whatever that term would be.

Appellant had no objection to the trial court’s pronouncement and has offered no evidence that he will serve more time than the trial court ordered. Proposition I is denied.

The revocation of the unserved balance in Count 1 is longer than the unserved balance in Counts 4 and 6. Accordingly, the challenges to these Counts raised in Propositions II, III and IV are moot. *See State v. Pyle*, 1937 OK CR 150, 71 P.2d 997, 999 (when an event occurs which makes a pending appeal unnecessary or renders the judgment ineffectual, the appeal should be dismissed).

In Proposition V Appellant argues, and the State concedes, the impositions of post-imprisonment supervision was error because it was not imposed at the time of sentencing. "The consequence of judicial revocation is to execute a penalty previously imposed in the judgment and sentence." *Marutzky v. State*, 1973 OK CR 398, 514 P.2d 430, 431. This Proposition has merit.

In Proposition VI, Appellant argues his revocation was not based on facts presented at the revocation hearing, but at a jury trial. This claim is not supported by the record because Judge Parish only commented that the facts he heard while presiding over the trial added to his ruling after summarizing the evidence that was presented at the revocation hearing. Proposition VI is denied.

In Proposition VII, Appellant argues he received ineffective assistance of counsel during the revocation proceedings. To succeed

on this claim, Appellant must first show that counsel's performance was deficient, and then he must show the deficient performance prejudiced the defense. *Bland v. State*, 2000 OK CR 11, ¶ 112, 4 P.3d 702, 730-31 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Aside from the imposition of post-imprisonment supervision, which the State concedes, Appellant fails to show prejudice. “Where a defendant fails to show prejudice, we will dispose of a claim of ineffective assistance on that ground.” *Tucker v. State*, 2016 OK CR 29, ¶ 12, 395 P.3d 1, 6. Proposition VII is without merit.

DECISION

The order revoking Appellant’s suspended sentences in the District Court of Okfuskee County Case No. CF-2016-125 is **AFFIRMED**. The portion of the order imposing post-imprisonment supervision is **VACATED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF
OKFUSKEE COUNTY, THE HON. LAWRENCE W. PARISH,
DISTRICT JUDGE**

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OPINION BY: HUDSON, V.P.J.

ROWLAND, P.J.: CONCUR
LUMPKIN, J.: CONCUR
LEWIS, J.: CONCUR
MUSSEMAN, J.: CONCUR