

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
Appellant,)
)
v.)
)
DUSTIN DAUKEI-COLE,)
)
Appellee.)

NOT FOR PUBLICATION
Case No. SR-2022-250

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
APR 20 2023
JOHN D. HADDEN
CLERK

OPINION DISMISSING RESERVED QUESTION OF LAW

MUSSEMAN, JUDGE:

Dustin Daukei-Cole, Appellee, was convicted in the District Court of Cimarron County, Case No. CF-2015-10, of Possession of a Controlled Dangerous Substance, in violation of 63 O.S. § 2-402, following a plea of guilty. Appellee was sentenced on June 15, 2015, to five years in the Department of Corrections with all but the first two years suspended.

The State subsequently sought to revoke the remaining three years of Appellee's suspended sentence. However, following a hearing before the Honorable Jon K. Parsley, District Judge, the trial court ruled that the maximum amount of time that could be revoked was one year in the county jail. 22 O.S.2021, § 991b(G) ("[W]hen the

suspended sentence of a person is being considered for revocation for an offense where the penalty has subsequently been lowered to a misdemeanor, the sentence shall be modified to a term that does not exceed the current maximum sentence.”). The trial court then revoked Appellee’s sentence for one year.¹

The State appeals pursuant to 22 O.S.2021, § 1053(3), raising the following reserved question of law:²

- I. whether 22 O.S.2021, § 991b(G) violates the Oklahoma Constitution.

We hold that this appeal should be dismissed.

DISCUSSION

The State’s right of appeal to this Court rests upon statutory authority; it “exists only when expressly authorized,” and cannot be enlarged by construction. *City of Elk City v. Taylor*, 2007 OK CR 15, ¶ 7, 157 P.3d 1152, 1154 (citing *White v. Coleman*, 1970 OK CR 133, ¶ 11, 475 P.2d 404, 406); *See also State v. Sayerwine*, 2007 OK CR

¹ Appellee’s Judgment and Sentence does not mention modification of the suspended sentence, merely that “ONE (1) YEAR of the original suspended sentence... is hereby revoked.” Furthermore, nothing in the record before this Court suggests that any modification to Appellee’s sentence occurred.

² Appellant’s Motion for Leave of Court to File Amended Brief, filed August 19, 2022, is granted, and Appellee’s Motion to Strike Appellant’s Brief is denied.

11, ¶ 4, 157 P.3d 137, 138. Regarding a reserved question of law, “there must be a judgment of acquittal or an order of the court which expressly bars further prosecution.” *State v. Campbell*, 1998 OK CR 38, ¶ 8, 965 P.2d 991, 992; *See also State v. Tubby*, 2016 OK CR 17, ¶ 2, 387 P.3d 918, 920. This Court expressly adopted this requirement for reserved questions of law in 1975 after a thorough review of our precedent at the time. *State v. Robinson*, 1975 OK CR 237, ¶ 8, 544 P.2d 545, 550 (“[I]n order to appeal on a reserved question of law, the appeal must be taken from a judgment of acquittal of the defendant, or from an order of the court authorized by law which expressly bars further prosecution.”) (overruled on other grounds in *State v. Young*, 1994 OK CR 25, ¶ 4, 874 P.2d 57, 58).

The State presents no case, nor have we discovered one, where this Court has undertaken a reserved question of law on an order revoking a suspended sentence since our holding in *Robinson*. To the contrary, it has exclusively applied to acquittals and pretrial rulings barring further prosecution of the alleged crime. *See, e.g., Tubby*, 2016 OK CR 17, ¶ 1, 387 P.3d at 920 (“[J]ury acquitted [defendants]

of First Degree Felony Murder and convicted them of Accessory to First Degree Felony Murder.”); *City of Norman v. Taylor*, 2008 OK CR 22, ¶ 1, 189 P.3d 726, 727 (appeal on a reserved question of law following an acquittal); *State v. Gaytan*, 1998 OK CR 71, ¶ 1, 972 P.2d 356, 357 (appeal on a reserved question of law following an acquittal after jury trial); *Campbell*, 1998 OK CR 38, ¶¶ 6-10, 965 P.2d at 992-93 (holding an appeal on a reserved question of law was appropriate following the trial court’s finding of double jeopardy and subsequent order barring further prosecution).

The State’s present appeal starkly contrasts with the foregoing cases. Here, the State attempted to revoke Appellee’s remaining suspended sentence based on several allegations. The Appellee stipulated to those allegations and the trial court entered an order revoking some portion of the suspended sentence. This is a far cry from an acquittal or an order expressly barring further prosecution. As a result, this appeal is dismissed.

DECISION

The Clerk of this Court is ordered to accept for filing Appellant’s Amended Brief, tendered for filing August 19, 2022. Further, this

Court orders the reserved question of law **DISMISSED**. 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
CIMARRON COUNTY, THE HONORABLE JON K. PARSLEY,
DISTRICT JUDGE**

APPEARANCES AT TRIAL

GEORGE H. LEACH, III
DISTRICT ATTORNEY
TAOS SMITH
ASSISTANT DISTRICT ATTORNEY
319 N. MAIN
BOISE CITY, OK 73933
COUNSEL FOR STATE

VONDA WILKINS
OKLAHOMA INDIGENT DEFENSE
SYSTEM
1001 N. MAIN STREET
GUYMON, OK 73942
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

GEORGE H. LEACH, III
DISTRICT ATTORNEY
TAOS SMITH
ASSISTANT DISTRICT
ATTORNEY
319 N. MAIN
BOISE CITY, OK 73933
COUNSEL FOR APPELLANT

ARIEL PARRY
OKLAHOMA INDIGENT
DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

OPINION BY: MUSSEMAN, J.

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