

Oklahoma County District Court Case No. CF-2012-6774. On June 17, 2014, the revocation hearing was held before Judge Wallace. The State introduced as evidence Appellant's Judgment and Sentence, and other documents, in Oklahoma County District Court Case No. CF-2012-6774. Appellant objected and demurred claiming the Judgment and Sentence was not final. Judge Wallace overruled Appellant's objection and demurrer and revoked the balance of Appellant's suspended sentences, eight years and ten months.

Appellant filed this appeal from the revocation of the balance of his suspended sentence asserting four propositions of error:

- I. THE DISTRICT COURT ABUSED ITS DISCRETION IN FINDING THE EVIDENCE SUFFICIENT WHERE THE STATE FAILED TO PROVE THE FINALITY OF THE JUDGMENT INTRODUCED TO PROVE A VIOLATION OF PROBATION.
- II. THE DISTRICT COURT ORDER ISSUED CONTEMPORANEOUSLY WITH THE REVOCATION OF THE REMAINING BALANCE OF MR. BARNES' SUSPENDED SENTENCE IN FULL IMPERMISSIBLY EXTENDED THE ORIGINAL SENTENCE.
- III. THE JULY 21, 2014, "ORDER REVOKING SUSPENDED SENTENCE" ISSUED SUBSEQUENT TO THE OPEN COURT REVOCATION ANNOUNCEMENT AND CONTEMPORANEOUS ORDER OF JUNE 17, 2014, MUST BE DECLARED VOID.
- IV. THE "ORDER REVOKING SUSPENDED SENTENCE" ISSUED SUBSEQUENT TO THE CONTEMPORANEOUS ORDER MEMORIALIZING THE REVOCATION OF APPELLANT'S SUSPENDED SENTENCE IMPERMISSIBLY EXTENDS MR. BARNES' SENTENCE AND IMPERMISSIBLY IMPOSED A TERM OF POST-INCARCERATION PROBATION.

The State has filed a response agreeing that there is merit to Appellant's Proposition I. The State acknowledges that the District Court erred in failing to

sustain Appellant's objection to State's exhibit 1 and in failing to grant the demurrer to the state's evidence.

ANALYSIS

A suspended sentence may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose. 22 O.S.2011, § 991b(A). The evidence must show by a preponderance of the evidence that the defendant has violated the rules and conditions of his probation. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1321. When the State seeks to revoke a suspended sentence on the basis a new crime has been committed, the State must either prove each element of the offense alleged, or must provide strict proof of the finality of the judgment and sentence imposed for the new crime. *Sams v. State*, 1988 OK CR 137, ¶ 6, 758 P.2d 834, 835. A judgment and sentence becomes final when the defendant does not appeal within the time prescribed for direct appeal or, if the defendant perfects a direct appeal, final disposition is made and entered by the appellate court. *Pickens v. State*, 1989 OK CR 58, ¶ 12, 779 P.2d 596, 598.

Both Appellant and the State agree that the only evidence presented at the revocation hearing was Appellant's Judgment and Sentence in Oklahoma County District Court Case No. CF-2012-6774. No evidence was presented that the Judgment and Sentence was final. Therefore, this matter must be

reversed and remanded to the District Court for further proceedings. See *Pickens, supra*.

DECISION

The order of the District Court of Choctaw County revoking the balance of Appellant's suspended sentences, eight years and ten months, in Case No. CF-2005-163 in the District Court of Choctaw County is **REVERSED** and **REMANDED** to the District Court for further proceedings. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CHOCTAW COUNTY
THE HONORABLE JANA K. WALLACE, ASSOCIATE DISTRICT JUDGE

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OPINION BY: JOHNSON, J.

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

RC/F

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