

Cleveland County District Court Case No. CF-2013-635; (4) Robbery With a Dangerous Weapon in Oklahoma County District Court Case No. CF-2013-2426; and (5) Robbery in the First Degree in Oklahoma County District Court Case No. CF-2013-2436. On February 5, 2014, the State filed an amended motion to revoke, which dismissed the alleged violations arising from Cleveland County District Court Case No. CF-2013-414 and Oklahoma County District Court Case No. CF-2013-2436. Also on February 5, 2014, Appellant filed a motion for discovery, to which the State objected. On February 11, 2014, a hearing was held on Appellant's motion for discovery and Judge Balkman denied the motion. On February 24, 2014, the revocation hearing began. After the evidence was presented, Judge Balkman took the matter under advisement. On March 24, 2014, Judge Balkman found Appellant violated probation and revoked his five year suspended sentence in full, with credit for time served.

Appellant filed this appeal asserting four propositions of error:

- I. FAILURE TO ALLOW DISCOVERY PRIOR TO THE REVOCATION HEARING VIOLATED MR. HARLEY'S DUE PROCESS RIGHT GUARANTEED BY THE FOURTEENTH AMENDMENT AND DENIED HIM HIS STATUTORY RIGHT TO PRESENT A COMPETENT DEFENSE, THUS, RESULTING IN A FUNDAMENTALLY UNFAIR PROCEEDING.
- II. THERE WAS INSUFFICIENT COMPETENT EVIDENCE THAT MR. HARLEY COMMITTED THE OFFENSE OF BURGLARY IN THE FIRST DEGREE DUE TO THE TAINTED PRE-HEARING IDENTIFICATION; AS A RESULT, MR. HARLEY WAS DENIED HIS STATUTORY AND DUE PROCESS RIGHTS TO A FUNDAMENTALLY FAIR HEARING.
- III. MR. HARLEY WAS DENIED HIS DUE PROCESS RIGHT TO CONFRONTATION AND THERE WAS INSUFFICIENT

COMPETENT EVIDENCE TO PROVE MR. HARLEY COMMITTED THE OFFENSE OF ROBBERY IN OKLAHOMA COUNTY WHEN THE TRIAL COURT ERRED BY ADMITTING INTO EVIDENCE AN UNCERTIFIED DOCUMENT OF AN ALLEGED PRELIMINARY HEARING.

- IV. THE CUMULATIVE AFFECT (SIC) OF THE ERRORS DENIED MR. HARLEY A FUNDAMENTALLY FAIR HEARING AND RESULTED IN EXCESSIVE REVOCATION.

ANALYSIS

In Proposition I, Appellant cites *Bourland v. State*, 1993 OK CR 14, ¶¶ 4, 5, 848 P.2d 580, 581, in support of his argument that he is entitled to discovery in a revocation proceeding, and that the District Court's failure to grant his request for discovery requires reversal of this matter and remand for further proceedings. However, this Court has consistently held that even when a discovery violation occurs, appropriate relief must be fashioned. See *Hammon v. State*, 1995 OK CR 33, ¶ 31, 898 P.2d 1287, 1296. Appellant hasn't established that he has actually been harmed by any discovery violation or that any relief is warranted. The evidence used to revoke Appellant's suspended sentence was contained in preliminary hearing transcripts from his new criminal cases. In those proceedings, Appellant was represented by counsel, was given the right to confront and cross-examine the witnesses, and was given the right to present evidence. See *Wortham v. State*, 2008 OK CR 18, 188 P.3d 201. Appellant has not established that the outcome of his revocation hearing would have or should have been different, or that the hearing was fundamentally unfair.

In Proposition II, Appellant challenges only the sufficiency of the evidence

used to establish his commission of Burglary in the First Degree as charged in Cleveland County District Court Case No. CF-2013-457. Appellant has not challenged the sufficiency of the evidence regarding other alleged violations of probation. Proof of a violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 557. In any event, based on a totality of the circumstances in this matter, the victim's identification of Appellant as the perpetrator was not so tainted as to require being set aside. *Harmon v. State*, 2011 OK CR 6, ¶43, 248 P.3d 918, 935-36. Moreover, Appellant's challenge to the identification was not sustained at the preliminary hearing in Cleveland County District Court Case No. CF-2013-457. The United States Supreme Court has stated that a probationer "cannot relitigate issues determined against him in other forums." *Morrissey v. Brewer*, 408 U.S. 471, 490, 92 S.Ct. 2593, 2605, 33 L.Ed.2d 484 (1972).

In Proposition III, Appellant argues that evidence of the alleged probation violation relating to Oklahoma County District Court Case No. CF-2013-2426 was insufficient and incompetent because the preliminary hearing transcript admitted into evidence at the revocation hearing was merely a copy of an e-mailed PDF document and was not certified by the court reporter as an official transcript of that preliminary hearing. Appellant correctly notes that a court reporter is required to "certify to the correctness of the transcript" of judicial proceedings. 20 O.S.2011, § 106.4(B). Appellant also correctly notes that a transcript must be "duly certified as correct by the reporter who took the

evidence” before it shall be “admissible as evidence in all cases . . . [and] incorporated into any appellate record.” 20 O.S.2011, § 106.5. Therefore, Judge Balkman erred by overruling Appellant’s objection and admitting into evidence at the revocation hearing the copy of the preliminary hearing transcript from Oklahoma County District Court Case No. CF-2013-2426. The remaining evidence, however, was more than sufficient to show that Appellant committed other felony crimes while on probation, and proof of a violation of even one condition of probation is sufficient to justify revocation of a suspended sentence. *Tilden, supra*.

In Proposition IV, Appellant argues that the cumulative effect of errors in this matter requires reversal of the revocation of his suspended sentence, or at least a finding that revocation in full is excessive. Because we have found that no relief is warranted based upon any errors committed during the revocation of Appellant’s suspended sentence, we find that the cumulative effect of any errors does not warrant reversal of the revocation. *See Pavatt v. State*, 2007 OK CR 19, ¶ 85, 159 P.3d 272, 296-97. Moreover, the decision of the trial court to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and will not be disturbed absent an abuse thereof. *Jones v. State*, 1988 OK CR 20, ¶8, 749 P.2d 563, 565. The evidence clearly established that Appellant committed at least two new felony crimes while on probation. Judge Balkman’s revocation in full of Appellant’s five year suspended sentence is not excessive and will not be disturbed. *Id.*

DECISION

The order of the District Court of Cleveland County revoking Appellant's five year suspended sentence in Case No. CF-2011-1889 is **AFFIRMED**. 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 CLEVELAND COUNTY
THE HONORABLE THAD BALKMAN, 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

RA/F

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