



The State filed a motion to revoke Appellant's suspended sentence in Case No. CF-2009-63 on August 9, 2012. On February 7, 2013, Appellant stipulated to the violations of the rules of probation, waived the right to a revocation hearing in Case No. CF-2009-63, entered pleas of guilty in Case Nos. CF-2012-180, CF-2012-193, and CF-2012-205, and entered the Choctaw County Drug Court Program. Appellant agreed that if he successfully completed Drug Court the cases would be dismissed, but that if he failed Drug Court he would be sentenced to twenty years imprisonment.

The State filed an application to revoke Appellant from Drug Court in all four cases on January 10, 2014, alleging Appellant absconded from supervision. Following a hearing on April 1, 2014, the Honorable Gary L. Brock, Special Judge, found Appellant violated the Drug Court terms by absconding four separate times. He found that Appellant had a program of graduated sanctions for a series of absconding after being placed in rehabilitation. In Case No. CF-2009-63, Appellant was sentenced to seven years. Appellant was sentenced to twenty years in Case Nos. CF-2012-180, CF-2012-193 and CF-2012-205. These sentences were enhanced with six prior felony convictions. The sentences were all ordered to run concurrently, with credit for six months served in a rehabilitation facility and credit for time served from January 13, 2014.

Appellant appeals from his termination from Drug Court. On appeal Appellant argues:

1. The 20-year sentence imposed for the offense of Eluding/Attempting to Elude in CF-2012-205 exceeded the statutory maximum and must be modified.
2. The trial court abused its discretion in terminating Mr. Rutledge from Drug Court.

We find reversal is not required and affirm the trial court's order to terminate Appellant from the Choctaw County Drug Court Program.

1.

Appellant argues that the sentence imposed for Count 2 of Case No. CF-2012-205 must be modified to fit within the statutory punishment range for this crime and requests that the sentence be modified to no more than one year imprisonment. The State answers that any error in the sentencing on Count 2 is not plain from the record as Appellant was charged with felony eluding/attempting to elude a police officer, after former conviction of six felonies and that because the sentence was enhanced due to six prior felony convictions, the sentence of twenty years imprisonment was not outside the statutory maximum. The State also argues that this issue is not proper for a termination appeal but must be pursued through the certiorari process.

We agree. The record before this Court does not show that this sentence is illegal, the State does not agree that this sentence is illegal, and Appellant has other remedies to challenge this sentence. This issue has not been presented to the District Court for its review. The scope of review in a drug court termination appeal or in an acceleration appeal is limited to the validity of the termination order or the acceleration order. Rules 1.2(D)(5)(b) and

1.2(D)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015).

2.

Appellant argues that the imposition of twenty years imprisonment for these offenses imposes too high a sanction upon both Appellant and societal resources. “At the revocation hearing, if the offender is found to have violated the conditions of the plea agreement or performance contract and disciplinary sanctions have been insufficient to gain compliance, the offender shall be revoked from the program and sentenced for the offense as provided in the plea agreement.” 22 O.S.2011, §471.7(E). The decision to revoke or terminate from Drug Court lies within the discretion of the Drug Court judge. *Hagar v. State*, 1999 OK CR 35, ¶11, 990 P.2d 894. The Oklahoma Drug Court Act, 22 O.S.2011, §471.7(E), requires the Drug Court judge to recognize relapses and restarts in the program by ordering progressively increasing sanctions or providing incentives rather than removing the offender from the program when a relapse occurs “except when the offender’s conduct requires revocation from the program.” On appeal Appellant does not challenge the evidence showing he violated his Drug Court agreement, but only argues that twenty years is too high of a sanction. Appellant has not shown an abuse of discretion.

#### **DECISION**

The termination of Appellant from Drug Court in Choctaw County District Court Case Nos. CF-2009-63, CF-2012-180, CF-2012-193 and CF-2012-205 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 CHOCTAW COUNTY  
THE HONORABLE GARY L. BROCK, SPECIAL JUDGE**

**APPEARANCES AT  
DRUG COURT TERMINATION  
HEARING**

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**OPINION BY: LUMPKIN, V.P.J.**

SMITH, P.J. CONCUR  
JOHNSON, J.: CONCUR  
LEWIS, J.: CONCUR  
HUDSON, J.: CONCUR

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