

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

LEANDRA M. JACKSON-HUBBS,

Appellant,

-vs.-

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. RE-2016-138

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 11 2017

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

HUDSON, JUDGE:

In the District Court of Tulsa County, Case No. CF-2005-3064, Leandra M. Jackson-Hubbs, Appellant, while represented by counsel, entered pleas of guilty to Count 1, Possession of a Controlled Drug (Cocaine) with Intent to Distribute, and Count 2, Possession of Marijuana (misdemeanor). In accordance with a plea agreement, the Honorable Clancy Smith, District Judge, sentenced Appellant on August 10, 2005, to concurrent terms of four (4) years imprisonment on Count 1, and one (1) year in the county jail on Count 2, all suspended under written conditions of probation. Additionally, fines of \$500.00 on Count 1 and \$250.00 on Count 2 were imposed.

On February 28, 2006, the State filed an Application to Revoke Suspended Sentence. This Application alleged that Appellant violated her probation by (1) failing to report, (2) failing to report her residence address, and (3) failing to pay probation fees. On September 5, 2006, after being taken into custody under the warrant that was issued on that Application, Appellant was admitted to a surety bond and released. The following day, Appellant failed to appear as ordered and another warrant was issued for her arrest that set bond at \$50,000.00. Nine years would lapse before Appellant, in December of 2015,

was returned to court to proceed on the Application to Revoke filed back in February of 2006. This return to custody was also brought about by charges against Appellant for the commission of new offenses.

At a February 18, 2016, evidentiary hearing on the Application to Revoke the State proved Appellant's failure to report her residence address and her failure to report to her probation officer as directed. At the conclusion of that hearing, the Honorable William J. Musseman, District Judge, revoked the suspension order on Count 1 in full and denied Appellant's request for credit for that time she had served pending her evidentiary hearing.

Appellant now appeals this final order of revocation and raises the following proposition of error:

The District Court abused its discretion in failing to grant Appellant credit for time served.

Having thoroughly considered this proposition of error and the entire record before this Court, including the original record, transcript, and briefs of the parties, the Court finds Appellant has not shown error occurred.

Appellant acknowledges the general rule that a trial judge has discretion in deciding whether to allow a defendant credit for time served in jail prior to trial. He relies, however, on an exception to that general rule identified in the case of *Holloway v. State*, 2008 OK CR 14, 182 P.3d 845. In *Holloway*, the Court found the Equal Protection Clause required the defendant in that matter be given credit for jail-time served awaiting trial, because such jail time had been the result of his financial inability to make bond *and* because he had received the maximum sentence allowed on the offense for which he had been convicted. "It is impermissible, under the Equal Protection Clause, to require that indigents serve sentences greater than the maximum provided by statute

solely by reason of their indigency.” *Holloway*, ¶ 10, 182 P.3d at 848 (emphasis added), quoting *Hall v. Furlong*, 77 F.3d 361, 364 (10th Cir.).

In reviewing Appellant’s matter, we find she fails to establish each of the components essential for establishing the equal protection violation identified in *Holloway*. Assuming for the sake of discussion only that the revocation of Appellant’s suspended sentence in full would be the equivalent of a defendant receiving the maximum statutory term of confinement on a conviction, Appellant must also establish that her pretrial confinement was solely the result of indigence. She has not shown, however, that her jail detention was not the result of her new charges in a different case rather than her inability to make bond in the revocation matter because she was indigent.

In an effort to establish an abuse of discretion on other grounds, Appellant also cites to an unpublished decision of this Court in *Howard v. State*, No. O-98-1381 (Okl.Cr. Sept. 23, 1999) (Accelerated Docket Order). In *Howard* the Court granted relief on a defendant’s claim that he was entitled to credit for the time he had served pending his revocation hearing. We have reviewed *Howard*, but we do not find the facts and circumstances in that case parallel those in Appellant’s matter. *Howard*, therefore, does not establish that the decision to deny credit for time served in her particular matter was an abuse of discretion. See *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209 (“An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts.”).

DECISION

The final order of February 18, 2016, revoking in full the order suspending execution of Appellant’s four-(4)-year sentence of imprisonment on

Count 1 in Tulsa County District Court Case No. CF-2005-3064, is **AFFIRMED**. Pursuant to Rule 3.15 of this Court's *Rules*, **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM J. MUSSEMAN, DISTRICT JUDGE

APPEARANCES AT TRIAL

RICHARD KOLLER
ASSISTANT PUBLIC DEFENDER
423 SOUTH BOULDER AVE., SUITE 300
TULSA, OKLAHOMA 74103
ATTORNEY FOR DEFENDANT

KATIE KOLJACK
ASSISTANT DISTRICT ATTORNEYS
500 SOUTH DENVER, SUITE 900
TULSA, OKLAHOMA 74103
ATTORNEY FOR STATE OF OKLAHOMA

APPEARANCES ON APPEAL

NICOLE DAWN HERRON
ASSISTANT PUBLIC DEFENDER
423 SOUTH BOULDER AVE., SUITE 300
TULSA, OKLAHOMA 74103

ATTORNEY FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
JOSHUA L. LOCKETT
ASSISTANT ATTORNEY GENERAL
313 NORTHEAST 21ST STREET
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE

OPINION BY: HUDSON, J.

LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
SMITH, J.: RECUSE

RA