

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

SHAUN LEE GESSEL,)
)
 Appellant,)
)
 -vs-)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-2006-262

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR 21 2006
MICHAEL J. ...
CLERK

ORDER GRANTING REVOCATION APPEAL

The Appellant, Shaun Lee Gessel, has appealed to this Court from the revocation of his suspended sentences, entered by the Honorable Twyla Mason Gray, District Judge, in Case Nos. CF-2002-1069, CF-2002-6266, CF-2003-3457, CF-2004-1823, and CF-2004-2525 in the District Court of Oklahoma County

On February 6, 2006, an application to revoke Appellant's suspended sentence was filed in each of the five cases. Each application alleged that Appellant had violated probation by committing the new crime of Assault and Battery With a Dangerous Weapon, as alleged in Oklahoma County District Court Case No. CF-2005-6652.

On February 28, 2006, the hearing on the application to revoke was conducted before Judge Gray. Prior to the hearing, the State filed an amended application to revoke in Case No. CF-2002-1069, which added a violation that

Appellant failed to complete terms of probation. During the hearing, the State called Appellant's probation officer as a witness. She testified that Appellant had failed to report; failed to pay restitution; and failed to do any drug and alcohol assessments. The State rested noting they did not plan to present any evidence on the alleged violation that Appellant had committed the new crime of Assault and Battery With a Dangerous Weapon as alleged in Oklahoma County District Court Case No. CF-2005-6652. Judge Gray revoked Appellant's suspended sentences in full finding he had committed the alleged violation that he had not complied with probation. After the hearing the State filed amended applications to revoke in Case Nos. CF-2002-6266, CF-2003-3457, CF-2004-1823, and CF-2004-2525, which added the additional violations of: (1) failure to report; (2) failure to complete terms of probation; (3) failure to pay restitution; (4) failure to complete drug and alcohol assessment; (6) failure to pay probation fees; and (7) failure to notify of change of address.

Appellant asserts one proposition of error in this appeal. Appellant contends that his revocation should be reversed as he was not given adequate notice of the ground for which he was revoked in violation of the Federal and State Constitutions.

We find that Appellant was not afforded sufficient notice of the grounds upon which revocation was sought, and that the revocation was ordered on the basis of applications not alleged, or inadequately alleged, in the application. *Lennox v. State*, 1984 OK CR 22, 674 P.2d 1146. The original application to revoke gave Appellant notice of the alleged violation of his crime in Oklahoma

County District Court Case No. CF-2005-6652. However, no evidence relating to that violation was presented at the revocation hearing. The amended application to revoke in Case No. CF-2002-1069 was not filed until just before the revocation hearing and did not state allegations sufficiently clear to advise Appellant of the reasons for seeking the revocation. *Lennox*, 1984 OK CR 22 at ¶¶5-7, 674 P.2d at 1148-49. The amended applications to revoke filed after Appellant's suspended sentences had already been revoked did not provide any notice to Appellant.

IT IS THEREFORE THE ORDER OF THIS COURT that Appellant's appeal from the revocation of his suspended sentences in Case Nos. CF-2002-1069, CF-2002-6266, CF-2003-3457, CF-2004-1823, and CF-2004-2525 in the District Court of Oklahoma County should be, and is hereby, **GRANTED** and the matter is **REMANDED** to the District Court.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007), the **MANDATE** is **ORDERED** issued forthwith upon the filing of this decision with the Clerk of this Court.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 2/5 day of March, 2007.



GARY L. LUMPKIN, Presiding Judge



CHARLES A. JOHNSON, Vice Presiding Judge

Charles S. Chapel

CHARLES S. CHAPEL, Judge

Arlene Johnson

ARLENE JOHNSON, Judge

David B. Lewis

DAVID B. LEWIS, Judge

ATTEST:

Michael S. Rich

Clerk

RA