

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CURTIS D. SMITH,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

No. RE-2004-1143

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 14 2005

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION
REVERSING REVOCATION FROM DRUG COURT PARTICIPATION

Appellant was convicted of Unlawful Delivery of a Controlled Drug in Seminole County District Court Case No. CF-2001-88. Appellant was sentenced to five (5) years, all suspended and ordered to participate in the Drug Court Program. Subsequently, the State filed an application to revoke. A hearing on the application was held before the Honorable George Butner, District Judge.

After a review of the record on appeal, we **FIND** the order of the District Court revoking Appellant from Drug Court must be **REVERSED** and this matter **REMANDED** to the District Court with instructions to reinstate Appellant in the Drug Court program.

The record reveals the sole basis for the trial court's revocation of Appellant's participation from the Drug Court program was Appellant's previous dishonesty to the court about his employment, and/or lack thereof, and failure to complete community service.¹ However, Appellant had previously been


¹ Specifically, the court found that Appellant's conduct of "standing up before the Court, advising the Court of untruths is inappropriate." (Tr. 67) The Court had previously dismissed a charge of Indecent Exposure, CF-2004-241, for insufficient evidence. (Tr. 64). Finally, no other evidence supporting the other alleged Rule violations was presented, nor relied upon by the court in its decision to revoke. In fact, the State concedes in its Brief that Appellant's

sanctioned for those rule infractions.² Once a sanction is imposed for a probation violation in a Drug Court case, the State may no longer use that particular violation as the basis for a subsequent application for sanctions or to terminate a defendant's participation in Drug Court. *See Robinson v. State*, 1991 OK CR 44, 809 P.2d 1320.

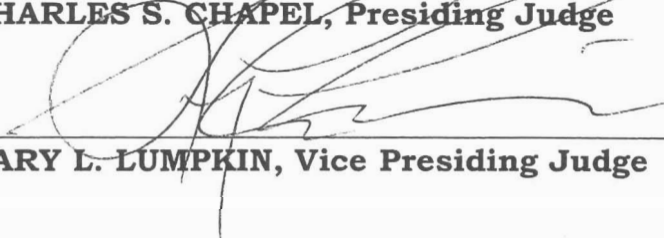
IT IS THEREFORE THE ORDER OF THIS COURT that the order of the Seminole County District Court revoking Appellant from Drug Court participation in Case No. CF-2001-88 is **REVERSED**. **IT IS THE FURTHER ORDER OF THIS COURT** that this matter is remanded to the District Court with instructions to reinstate Appellant to the Drug Court program. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 14th day of November, 2005.




CHARLES S. CHAPEL, Presiding Judge

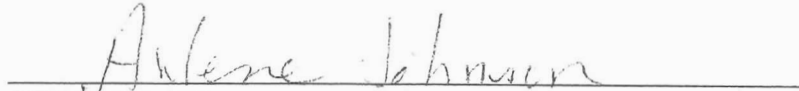


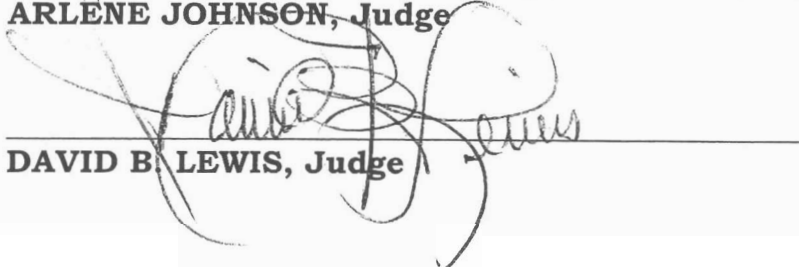
GARY L. LUMPKIN, Vice Presiding Judge

“attitude and his inability to cooperate and be truthful with the Drug Court were the basis for the revocation..”

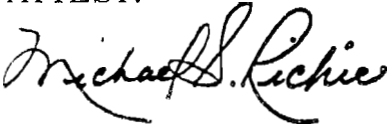
² Gayla Arnold testified Appellant had already been sanctioned for the prior rule violations. (Tr. 36)


CHARLES A. JOHNSON, Judge


ARLENE JOHNSON, Judge


DAVID B. LEWIS, Judge

ATTEST:



Clerk