



DOMINGUEZ v. STATE

2024 OK CR 13

Case Number: [RE-2023-80](#)

DAMIEN LEE DOMINGUEZ, Appellant v. THE STATE OF OKLAHOMA, Appellee

Cite as: 2024 OK CR 13, ___ __

SUMMARY OPINION

LUMPKIN, JUDGE:

¶1 Appellant appeals from the revocation of his suspended sentence in Case No. CF-2018-122 in the District Court of Custer County, by the Honorable Donna L. Dirickson, Associate District Judge. On August 17, 2018, Appellant pled guilty to Domestic Assault and Battery by Strangulation, in violation of [21 O.S. Supp. 2014, § 644\(J\)](#), and was sentenced to a three year deferred sentence. On May 24, 2019, the State filed an Application to Accelerate Deferred Judgment alleging Appellant violated the terms and conditions of his probation by failing to pay probation fees, to complete the Batterer's Intervention Program, to report as directed, and to appear for urinalysis testing. On December 12, 2019, Appellant entered a plea of guilty to the State's Application to Accelerate Deferred Judgment and was sentenced to three years incarceration with all suspended except one weekend in county jail. On November 30, 2020, the State filed an Application to Revoke Suspended Sentence alleging Appellant violated the terms and conditions of his probation by failing to complete the Batterer's Intervention Program and to pay DA supervision fees. Following a revocation hearing on January 19, 2023, Judge Dirickson revoked the remaining two years and three hundred sixty-three days of Appellant's suspended sentence in full. Appellant appeals, raising a single proposition of error:

THE TRIAL COURT ABUSED ITS DISCRETION BY REVOKING MR. DOMINGUEZ IN FULL FOR TECHNICAL VIOLATIONS.

¶2 Appellant did not raise this objection below and therefore review is for plain error. *Parker v. State*, [2021 OK CR 17](#), ¶ 16, [495 P.3d 653](#), 660. As set forth in *Simpson v. State*, [1994 OK CR 40](#), ¶¶ 2, 11, 23, 30, [876 P.2d 690](#), 694-95, 698-99, we determine whether Appellant has shown an actual error, which is plain or obvious, and which affects his or her substantial rights. This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.*, [1994 OK CR 40](#), ¶ 30, [876 P.2d](#) at 701.

¶3 "A suspended sentence is a matter of grace." *Demry v. State*, [1999 OK CR 31](#), ¶ 12, [986 P.2d 1145](#), 1147. As such, the State must only prove one violation of probation in order to revoke Appellant's suspended sentence in full. *Tilden v. State*, [2013 OK CR 10](#), ¶ 10, [306 P.3d 554](#), 557 (citing *McQueen v. State*, [1987 OK CR 162](#), ¶ 2, [740 P.2d 744](#), 745). The decision to revoke a suspended sentence in whole or in part is within the sound discretion of the trial court and such decision will not be disturbed absent an abuse thereof. *Jones v. State*, [1988 OK CR 20](#), ¶ 8, [749 P.2d 563](#), 565. An "abuse of discretion" is a clearly erroneous conclusion and judgment, one clearly against the logic and effect of the facts presented. *Neloms v. State*, [2012 OK CR 7](#), ¶ 35, [274 P.3d 161](#), 170.

¶4 In his sole proposition, Appellant argues the trial court abused its discretion by revoking Appellant's suspended sentence in full based on "technical violations" and maintains the revocation order should be modified. At the revocation hearing the trial court determined Appellant failed to complete the Batterer's Intervention Program (BIP) and failed to pay DA supervision fees.

The State must only show by a preponderance of the evidence that a violation has occurred to revoke a suspended sentence. See *Tilden*, 2013 OK CR 10, ¶ 5, 306 P.3d at 556. Appellant does not argue that there was insufficient evidence presented for the trial court to conclude, by a preponderance of the evidence, that Appellant violated the terms and conditions of his probation. Instead, Appellant argues that it was an abuse of discretion for the trial court to revoke his suspended sentence in full since this was his first revocation, and the violations were technical.

¶5 There are two statutes at issue in this case. Section 991b of Title 22 is a general statute which provides for suspension of sentences and revocation of suspended sentences for probation violations. See 22 O.S.Supp.2019, § 991b(A). Section 991b(B) limits the amount of a suspended sentence which may be revoked based upon a technical violation. Section 991b(C) defines non-technical violations of rules of probation. Any violation not set out in this section is a technical violation and deserves a lesser revocation, *i.e.*, not exceeding six months for a first revocation and five years for a second or subsequent revocation. *Id.*, at § 991b(B).

¶6 Section 644(G) of Title 21 is a specific statutory provision which provides that in domestic abuse cases the trial court shall "order as a condition of a suspended or deferred sentence that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse . . . [.]" 21 O.S.Supp.2019, § 644(G)(1). In Section 644(G)(5), if the court finds the defendant is not attending the court-ordered domestic abuse counseling or treatment or is not in compliance with any requirements of that treatment, "[t]he court may revoke **all or any part of a suspended sentence, deferred sentence, or probation** pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence[.]" (emphasis added). Thus, the two statutes seem to be in conflict regarding revocation of suspended sentences in domestic violence cases.

It is a classic rule of statutory construction that statutes are to be construed to determine, if possible, the intent of the Legislature, *Ritchie v. Raines*, 374 P.2d 772, 775 (Okl.Cr.App.1962), reconciling provisions, rendering them consistent and giving intelligent effect to each. *State v. Ramsey*, 868 P.2d 709, 711 (Okl.Cr.App.1993). When there is a conflict between various statutes applying to the same situation, the more specific of the two governs. *Stiles v. State*, 829 P.2d 984, 989 (Okl.Cr.App.1992); *Bowman v. State*, 789 P.2d 631, 632 (Okl.Cr.App.1990). This is so even if the general statute was enacted later than the specific one. *State v. Woodward*, 737 P.2d 569, 570--71 (Okl.Cr.App.1987).

Lozoya v. State, 1996 OK CR 55, ¶ 17, 932 P.2d 22, 28--29.

¶7 Under the above analysis, it is clear that Section 644 is a specific statute enacted by the Legislature to govern domestic abuse cases and punishment thereof, as well as to mandate court-ordered domestic violence counseling. The intent of the Legislature in enacting these specific domestic violence provisions is to ensure appropriate punishments for these crimes, including specific counseling for offenders. Such crimes affect the entire family, not just the abused victim. The reference in Section 644(G)(5) to the general statutory Section 991b is only to provide authority for a trial court to revoke the suspended sentence at all. It is not referenced to override the specific provisions of Section 644(G)(5) governing how much of the domestic violence sentence can be revoked.

¶8 Reading the two statutes together to give effect to the Legislature's intent and to render them consistent with each other, Section 644, the specific statute, controls the revocation of suspended sentences in domestic violence crimes. The trial court did not abuse its discretion in revoking Appellant's suspended sentence in full. Accordingly, Appellant's sole proposition of error is denied.

DECISION

¶9 The revocation of Appellant's suspended sentence in Custer County District Court Case No. CF-2018-122 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2024), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY,
THE HONORABLE DONNA L. DIRICKSON,
ASSOCIATE DISTRICT JUDGE**

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OPINION BY: LUMPKIN, J.
ROWLAND, P.J.: Concur
MUSSEMAN, V.P.J.: Dissent
LEWIS, J.: Specially Concur
HUDSON, J.: Concur

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MUSSEMAN, VICE PRESIDING JUDGE, DISSENTING:

¶1 The majority today takes a phrase from Section 644 of Title 21 and uses it out of context to discover a conflict with Section 991b of Title 22. After finding this purported conflict, the majority then resolves it by not only undercutting the function of Section 991b, but also this Court's statutory interpretation precedent. For these reasons, I must respectfully dissent.

¶2 The majority mentions in passing that Section 991b provides for the revocation of suspended sentences along with defining limits for revocation based on the nature of the probation violation, namely whether or not said violation is technical. However, it is worth noting the precise language used by the legislature: "*Any revocation* of a suspended sentence based on a technical violation *shall not* exceed six (6) months for a first revocation and five (5) years for a second or subsequent revocation." 22 O.S.2021, § 991b(B) (emphasis added). Undoubtedly, Appellant's case falls within the confines of this statute. However, the majority then reaches into a largely unrelated subsection of Section 644 to find a conflict in law that does not exist. Specifically, the majority focuses all of its attention on an incomplete reading of the last sentence in Section 644(G)(5): "[t]he court may revoke all or any part of a suspended sentence, deferred sentence, or probation" However, its analysis is divested from the context of the remaining paragraphs within Section 644(G)(1-4, 6, 7) and to the exclusion of the remaining portions of Section 644(G)(5).

¶3 When tasked with interpreting statutes, this Court employs familiar rules of statutory construction.

Our ultimate goal is to determine the intent of the Legislature and to interpret the statutes in accord therewith. *State v. Silas*, 2020 OK CR 10, ¶¶ 6, 470 P.3d 339, 341; *Lozoya v. State*, 1996 OK CR 55, ¶ 17, 932 P.2d 22, 28. Whenever possible, we rely upon the plain and ordinary meaning of the statutory language. *Silas*, 2020 OK CR 10, ¶¶ 6, 470 P.3d at 341. *Newlun v. State*, 2015 OK CR 7, ¶ 8, 348 P.3d 209, 211. We will also look to each part of the statute in question and other statutes on related subjects. *Landrum v. State*, 96 Okla.Crim.App. 356, 359, 255 P.2d 525, 529 (1953). In deference to our sister branch of government, wherever possible we interpret statutes so as to avoid constitutional issues, *Weeks v. State*, 2015 OK CR 16, ¶ 17, 362 P.3d 650, 654, and we avoid any construction which would render any legislative act vain or superfluous. *Vilandre v. State*, 2005 OK CR 9, ¶ 5, 113 P.3d 893, 896. See also *State v. District Court of Oklahoma County*, 2007 OK CR 3, ¶ 17, 154 P.3d 84, 87, *Byrd v. Caswell*, 2001 OK CR 29, ¶ 6, 34 P.3d 647, 648-49.

O'Connor v. Oklahoma State Conf. of NAACP, 2022 OK CR 21, ¶ 5, 516 P.3d 1164, 1165--66. With these principles in mind, and considering the entirety of Section 644(G), not merely a phrase taken out of context, the Legislature's intent becomes clear.

¶4 Section 644(G), especially paragraphs 1 through 7, largely set out the requirements for counseling or treatment as a condition of probation as well as the trial courts duties and powers when holding review hearings following imposition of a deferred or suspended sentence. 21 O.S.Supp.2014, § 644(G). Specifically:

Section 644(G)(1) requires defendants to participate in counseling or undergo treatment as detailed in Section 644(G)(2); Section 644(G)(3) requires the trial court to set a review hearing as well as vesting in the trial court additional powers regarding delaying and completing sentencing;

Section 644(G)(4) empowers the trial court to oversee and ensure compliance by granting continuing jurisdiction over the defendant to set additional review hearings;

Section 644(G)(6) requires the defendant to appear in person at the first review hearing while allowing for reports to satisfy subsequent review hearings; and

Section 644(G)(7) allows the trial court to appoint a referee to hear designated cases set for review under Section 644(G).

The above context makes clear that Section 644(G) is largely concerned with the imposition of treatment as a condition of probation for crimes of domestic violence along with granting the trial court continuing jurisdiction through the mechanism of review hearings to oversee a defendant's progress in treatment as needed.

¶5 Turning now to the paragraph at issue, Section 644(G)(5) states in total:

At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence[.]

21 O.S.Supp.2014, § 644(G)(5). The plain meaning of the words chosen by the Legislature is revealed when one reads the paragraph in its entirety, and in the context of Section 644(G) as a whole, and reveals no conflict between Sections 644(G)(5) and 991b.

¶6 The first sentence makes clear that this paragraph is consistent in subject matter, specifically that of the defendant's counseling or treatment program in the context of a review hearing. Additionally, it provides the trial court with the ability to order the defendant to continue treatment or even attend further treatment at this review hearing if the defendant is not otherwise satisfying the treatment requirements. Notably, Appellant was not "[a]t a review hearing" when the trial court ordered the remainder of Appellant's suspended sentence revoked. 21 O.S.Supp.2014, § 644(G)(5). Rather, Appellant's last review hearing was September 22, 2020, where the trial court specifically found further review was not required and that Appellant's noncompliance could result in the State filing a motion to revoke. The trial court revoked Appellant's suspended sentence on January 19, 2023, in excess of two years after Appellant's last review hearing.

¶7 The second sentence instructs the trial court that it may revoke any or all of a defendant's suspended sentence "*pursuant to* Section 991b." *Id.* (emphasis added). The majority, contrary to the structure of Section 644(G)(5), largely dismisses the phrase "pursuant to Section 991" by claiming the language is merely to provide authority for a trial court to revoke at all. However, Black's Law Dictionary defines "pursuant to" as: "1) In compliance with; in accordance with; under. 2) As authorized by; under. 3) In carrying out." *Pursuant to*, *Black's Law Dictionary* (11th ed. 2019). "Pursuant to" is a preposition that, "when used in a statute, is a *restrictive* term." *Pursuant to*, *Black's Law Dictionary* (6th ed. 1990) (emphasis added). Merriam-Webster defines a "preposition" as "a function word that typically combines with a noun phrase to form a phrase which usually expresses a modification of predication." Merriam-Webster's Dictionary, preposition, *available at* <https://www.merriam-webster.com/dictionary/preposition> (last visited Apr. 4, 2024). Applying this to the second sentence of Section 644(G)(5), the preposition "pursuant to" combines with the noun "Section 991b" to form a prepositional phrase expressing a modification or

restriction of the grammatical predicate, specifically "[t]he court may revoke all or any part of a suspended sentence" 21 O.S. Supp. 2014, § 644(G)(5). By the Legislature's own language in Section 644(G)(5), it has limited the court's authority to revoke a suspended sentence by Section 991b.

¶8 This reading gives affect to all of the words in Section 644(G)(5) and 991b all while reading them in the context the Legislature placed them in. Yet, with blinders as to the remainder of Section 644(G) and laser focus on the phrase "revoke all or any," to the exclusion of all others, the majority proceeds to divine the Legislature's intent as clearly one conflicting with Section 991b.

¶9 Stating the above plainly, the Legislature drafted Section 644(G)(5) to make clear that the review process was separate from revocation proceedings and that the authority vested in the trial courts in Section 991b was not modified by the enactment of Section 644(G). The Legislature accomplished this by the use of the restrictive prepositional phrase, "pursuant to." The majority today uses this very language to give the opposite affect to Section 644(G) and thwart the intent of the Legislature as evidenced by the plain meaning of its chosen words.

¶10 "Whenever possible, we rely upon the plain and ordinary meaning of the statutory language." *O'Connor*, 2022 OK CR 21, ¶ 5, 516 P.3d at 1165--66 (citing *Silas*, 2020 OK CR 10, ¶¶ 6, 470 P.3d at 341; *Newlun*, 2015 OK CR 7, ¶ 8, 348 P.3d at 211); *See also State v. Breznai*, 2022 OK CR 17, ¶ 14, 516 P.3d 686, 689; *State ex rel. Pruitt v. Steidley*, 2015 OK CR 6, ¶ 12, 349 P.3d 554, 557. Holding true to this principle, I find Section 644(G)(5) and Section 991b can be read together without conflict and giving full effect to both.

¶11 While the majority reaches the wrong result in this case, I fear the harm in publication of this case as precedent will far exceed the confines of Section 644(G)(5). Today's decision stands in contrast to this Court's precedent to hold ourselves accountable to the text of a statute and instead permits us to act as a roving legislature, harmonizing statutes as a majority of this Court sees fit, all while citing this case as justification. As a result, I respectfully dissent.

LEWIS, JUDGE, SPECIALLY CONCUR:

¶1 Either the legislature intentionally left the language of Section 644(G) of Title 21 which allows revocation of "all or any part of a suspended sentence" for failing to attend court-ordered domestic abuse treatment, or the legislature failed to change the language when it amended 991b(B) & (C) of Title 22 in 2018.

¶2 This Court must determine the legislature's intent in having two statutes which seem to conflict when it comes to revoking probationary sentences when a party fails to comply with the court's rules and conditions in domestic violence cases.

¶3 Each part of the various statutes must be given intelligent effect.

This Court will not presume the Legislature to have done a vain thing. We are mindful that elementary rules of statutory interpretation require us to avoid any statutory construction which would render any part of a statute superfluous or useless. . . .

State v. Doak, 2007 OK CR 3, ¶ 17, 154 P.3d 84, 87. Where possible the statutory amendments should be reconciled or construed together. *Id.*

State v. Stice, 2012 OK CR 14, ¶ 11, 288 P.3d 247, 250 (internal cites omitted).

¶4 Here, the trial court revoked a suspended sentence in full for a conceded, first-time, technical violation in contravention of Section 991b(B) and (C) but in accord with Section 644(G)(5). Either the legislature intended this type of violation be punished more harshly, intentionally keeping the language of 644(G)(5), or they intend the violation to be a technical violation and inadvertently left the language as an oversight.

¶5 Under our statutory construction rules, this Court must presume that the legislature knew what they were doing, and they left the language in Section 644(G)(5) as a specific circumstance which adds to the non-technical violations found in 991b(C). With that in mind, I join the majority and specially concur.

Citationizer® Summary of Documents Citing This Document

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Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1988 OK CR 20, 749 P.2d 563,</u>	<u>JONES v. STATE</u>	Discussed
<u>1990 OK CR 19, 789 P.2d 631,</u>	<u>BOWMAN v. STATE</u>	Cited
<u>1992 OK CR 23, 829 P.2d 984,</u>	<u>STILES v. STATE</u>	Cited
<u>1993 OK CR 54, 868 P.2d 709,</u>	<u>STATE v. RAMSEY</u>	Cited
<u>1994 OK CR 40, 876 P.2d 690,</u>	<u>SIMPSON v. STATE</u>	Discussed at Length
<u>1996 OK CR 55, 932 P.2d 22,</u>	<u>Lozoya v. State</u>	Discussed at Length
<u>2001 OK CR 29, 34 P.3d 647, 72 OBJ 3083,</u>	<u>BYRD v. CASWELL</u>	Discussed
<u>2005 OK CR 9, 113 P.3d 893,</u>	<u>VILANDRE v. STATE</u>	Discussed
<u>2007 OK CR 3, 154 P.3d 84,</u>	<u>STATE v. DISTRICT COURT OF OKLAHOMA COUNTY</u>	Discussed at Length
<u>2012 OK CR 7, 274 P.3d 161,</u>	<u>NELOMS v. STATE</u>	Discussed
<u>2012 OK CR 14, 288 P.3d 247,</u>	<u>STATE v. STICE</u>	Discussed
<u>2013 OK CR 10, 306 P.3d 554,</u>	<u>TILDEN v. STATE</u>	Discussed at Length
<u>2015 OK CR 7, 348 P.3d 209,</u>	<u>NEWLUN v. STATE</u>	Discussed at Length
<u>2015 OK CR 6, 349 P.3d 554,</u>	<u>STATE ex rel. PRUITT v. STEIDLEY</u>	Discussed
<u>2015 OK CR 16, 362 P.3d 650,</u>	<u>WEEKS v. STATE</u>	Discussed
<u>2020 OK CR 10, 470 P.3d 339,</u>	<u>STATE v. SILAS</u>	Discussed at Length
<u>2021 OK CR 17, 495 P.3d 653,</u>	<u>PARKER v. STATE</u>	Discussed
<u>2022 OK CR 17, 516 P.3d 686,</u>	<u>STATE v. BREZNAI</u>	Discussed
<u>2022 OK CR 21, 516 P.3d 1164,</u>	<u>O'CONNOR v. OKLAHOMA STATE CONFERENCE OF NAACP</u>	Discussed at Length
<u>1962 OK CR 101, 374 P.2d 772,</u>	<u>RITCHIE v. RAINES</u>	Cited
<u>1953 OK CR 40, 255 P.2d 525, 96 Okl.Cr. 356,</u>	<u>LANDRUM v. STATE</u>	Cited
<u>1999 OK CR 31, 986 P.2d 1145, 70 OBJ 2389,</u>	<u>Demry v. State</u>	Discussed
<u>1987 OK CR 81, 737 P.2d 569,</u>	<u>STATE v. WOODWARD</u>	Cited
<u>1987 OK CR 162, 740 P.2d 744,</u>	<u>McQUEEN v. STATE</u>	Discussed

Title 21. Crimes and Punishments

Cite	Name	Level
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Cite Name

21 O.S. 644,

Level

Punishment for Assault and Battery.

Discussed at Length

Title 22. Criminal Procedure

Cite

Name

Level

22 O.S. 991b,

Revocation in Whole or in Part of Suspended Sentence - Hearing - Review

Discussed