

OCDLA HOT SHEET

OKLAHOMA COURT OF CRIMINAL APPEALS ESTABLISHES NEW “LANDMINES”

FOR 20 DAY RULE FOR REVOCATON HEARINGS.

FACTS: **Grimes v. State, 2011 OK CR 16 (5/4/2011)**, OCCA rejected claim of violation of 20-day revocation hearing rule in 22 O.S 991b(A) (hearing on merits of revocation shall be held w/i 20 days after entry of not guilty plea to the petition, unless waived by both the state and the defendant). Grimes was in jail during the revocation. Grimes gave a Not Guilty plea to the revo app. July 15, 2009. Court told him you have a right to a hearing on this within 20 days or you can discuss this with (counsel) before you make that decision. Grimes replied, I want to discuss this with him (counsel) before I make that decision. Court appointed counsel and set next court date (for a bond reduction hearing) August 7, 2009, 23 days after Grimes plea of Not Guilty to the revo. No other setting was ordered. Grimes later appeared with counsel, August 13, and reluctantly agreed to setting a hearing on the merits for September 11. A hearing on the merits was held September 28, 2009. (75 days from his Not Guilty plea)

The “NEW” procedures for the 20 Revocation hearing rule are as follows:

- A. **OLD rule:** Unless waived by State & Defendant a revocation hearing MUST be held w/i 20 days from defendants Not Guilty Plea, otherwise it is dismissed.
- B. **NEW rule:** If defendant asks for a lawyer to be appointed OR seeks advice from retained or appointed counsel, the 20 day rule is “TOLLED” & “WAIVED” if hearing set past 20 days.
- C. **Court can set revocation hearing PAST the 20 day period. Based upon “B” above.** Unless defendant or Counsel affirmatively object w/i the original 20 day period to the Court setting hearing past the 20 day period, it is “tolled” and “waived”. So says OCCA!

Grimes was in Jail and had no control over the trial court’s setting of his next hearing some 23 days after entering his plea to the revo app., OCCA held that Grimes opting to consult with counsel before waiving his 20-day hearing right was essentially a waiver of that right. The OCCA stated:

The time limitation was tolled upon Grimes request to consult with counsel, and it was subsequently waived at the August 13, 2009, hearing when he agreed, however reluctantly, to the hearing date set by the court.

**READ AND RE-READ THE GRIMES CASE BEFORE YOU DO ANOTHER
REVOCATION.**

**LANDMINE: BE aware OF YOUR CLIENTS actions prior to you getting into
the case. Defendant’s “WAIVERS” may hurt him and the case!**

Thanks to Terry Hull, OCDLA member for this Hot Sheet.