

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DARRELL RAY BEAUCHAMP,)
)
 Petitioner,) NOT FOR PUBLICATION
)
 v.) Case No. C-2011-469
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 13 2013

SUMMARY OPINION GRANTING CERTIORARI

A. JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

Petitioner Darrell Ray Beauchamp entered a plea of guilty under *North Carolina v. Alford*¹ in the District Court of Tulsa County, Case No. CF-2010-2218, to Count 1 -Feloniously Pointing a Weapon, After Former Conviction of a Felony in violation of 21 O.S.2001, § 1289.16 and Count 2 - Felon in Possession of a Firearm in violation of 21 O.S.Supp.2009, § 1283. The Honorable Kurt G. Glassco accepted his plea and sentenced Beauchamp to twenty-five years imprisonment and a \$500 fine on Count 1 and fifteen years imprisonment and a \$500 fine on Count 2, to be served consecutively. Beauchamp filed a timely Motion to Withdraw Plea of Guilty. The district court appointed Beauchamp separate, conflict-free counsel, held the prescribed hearing and denied Beauchamp's motion. Beauchamp appeals the order

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (provides for the entry of a plea of guilty while maintaining innocence).

denying his motion and petitions this Court for a Writ of Certiorari allowing him to either withdraw his plea and proceed to trial or to modify his sentence.

Beauchamp raises the following issues:

- (1) whether his plea was knowing and voluntary; and
- (2) whether conflict counsel provided ineffective assistance of counsel.

We grant certiorari and remand this matter to the district court to allow Beauchamp to withdraw his plea and proceed to trial. We further find this case should be reassigned to another district judge.

This matter was remanded for an evidentiary hearing on Beauchamp's claim of ineffective assistance of counsel. The evidence presented not only concerned counsel's performance but the validity of the plea. The evidence presented supports a finding that Beauchamp entered his plea based upon his plea counsel's representation that counsel had spoken to the trial judge and the judge had said that he would sentence Beauchamp to a more favorable sentence than the State's offer and ultimately more favorable than that which the trial judge imposed. Plea counsel's representation that the judge was willing to impose a lower sentence than the State's offer significantly influenced Beauchamp's decision to enter a blind plea and reject the State's offer. Where it reasonably appears that a plea of guilty was influenced by persons in apparent authority which has led a defendant to believe that by entering such a plea his punishment would be mitigated, the defendant should be allowed to withdraw his plea. *See e.g., Gardner v. Oklahoma City*, 1968 OK CR 11, ¶ 5, 437 P.2d 279, 281. On the record before us, we find the trial court abused its discretion

in denying Beauchamp's motion to withdraw plea.² See *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. This matter is **REMANDED** to the district court with instructions to allow Beauchamp to withdraw his plea of guilty and proceed to trial after reassignment to a different district judge. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE KURT G. GLASSCO, DISTRICT JUDGE

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² We need not reach Beauchamp's other claim, namely ineffective assistance of counsel, because the writ must issue because his plea was not knowing and voluntary.

OPINION BY: A. JOHNSON, J.
LEWIS, P.J.: Concur
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur in Results
C. JOHNSON, J.: Concur