

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

DERRICK EWAYNE BICKHAM, )  
 )  
 Petitioner, )  
 vs. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION

No. C-2010-337

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
DEC 08 2010

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**SMITH, JUDGE:**

Derrick Ewayne Bickham pled no contest in the District Court of Pittsburg County, Case No. CF-2009-312, to Count I, Feloniously Pointing a Firearm in violation of 21 O.S.2001, § 1289.16, and Count II, Felon in Possession of a Firearm in violation of 21 O.S.Supp.2007, § 12873(A), both after former conviction of two or more felonies. He pled no contest in the District Court of Pittsburg County, Case No. CF-2009-313, to Count I, Feloniously Pointing a Firearm in violation of 21 O.S.2001, § 1289.16, and Count II, Felon in Possession of a Firearm in violation of 21 O.S.Supp.2007, § 12873(A), both after former conviction of two or more felonies. He pled no contest in the District Court of Pittsburg County, Case No. CF-2009-349, to Count I, First Degree Robbery in violation of 21 O.S.2001, § 797, after former conviction of two or more felonies. In accordance with a negotiated plea the Honorable James D. Bland sentenced Bickham to twenty (20) years imprisonment on each count in each case, all to run concurrently. Bickham must serve 85% of his sentence in CF-2009-349, for robbery, before becoming eligible for parole consideration. Bickham filed a timely Motion to Withdraw his pleas. The Motion was

denied after a hearing on April 1, 2010. Bickham filed his Petition for Writ of Certiorari with this Court.

Bickham raises two propositions of error in support of his petition:

- I. Derrick Bickham should be allowed to withdraw his no contest pleas, which were entered without sufficient deliberation and were not knowing and voluntary. Rather, the pleas were the result of coercion by petitioner's attorney and petitioner's unmedicated mental illness.
- II. The trial court abused its discretion by assessing incarceration costs against petitioner without following the rules and requirements of Oklahoma law.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that relief is not required by the law or evidence. We find in Proposition I that Bickham's pleas were knowingly, intelligently and voluntarily entered. *Lewis v. State*, 2009 OK CR 30, ¶ 5, 220 P.3d 1140, 1142; *King v. State*, 1976 OK CR 103, ¶ 11, 553 P.2d 529, 532-33. The trial court did not abuse its discretion in denying Bickham's motion to withdraw. *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251. The record shows that Bickham was taking his prescribed medication for mental illness at the time he entered his pleas, and understood the pleas and their consequences. The record does not support his claim that his attorney threatened or coerced him to enter his pleas.

We find in Proposition II that Bickham may challenge the determination of the days he was incarcerated in the Pittsburgh County jail, for purposes of calculating jail incarceration costs, in an appropriate proceeding in the District Court. 22 O.S.Supp.2008, § 979a(A); 22 O.S.2001, § 983(D); Rule 8.1, *Rules of the*

*Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010). We further find there is no requirement that the record in this case show how the Pittsburgh County sheriff reached the \$44 per day determination of average daily cost. *Hubbard v. State*, 2002 OK CR 8, ¶ 10, 45 P.3d 96, 100. Finally, we find that under the circumstances of this case, Bickham was entitled to a determination of whether he is a mentally ill person as defined by Section 1-103 of Title 43A of the Oklahoma Statutes. 22 O.S.Supp.2008, § 979a(A). If so, he is exempt from the imposition of jail incarceration costs. *Id.* The case is remanded to the District Court of Pittsburgh County to make such a determination.

**DECISION**

The Petition for Writ of Certiorari is **DENIED**. The case is **REMANDED** to the District Court of Pittsburgh County for a determination under 22 O.S.Supp.2008, § 979a(A) of whether Bickham is a mentally mentally ill person as defined by Section 1-103 of Title 43A of the Oklahoma Statutes. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PITTSBURG COUNTY  
THE HONORABLE JAMES D. BLAND, ASSOCIATE DISTRICT JUDGE

**APPEARANCES AT TRIAL**

RONNIE MAY  
ATTORNEY AT LAW  
P.O. BOX 846  
MCALESTER, OK 74501  
COUNSEL FOR DEFENDANT

RICHARD HULL  
ASSISTANT DISTRICT ATTORNEY  
PITTSBURG COUNTY COURTHOUSE  
115 E. CARL ALBERT PARKWAY  
MCALISTER, OK 74501  
COUNSEL FOR STATE

**APPEARANCES ON APPEAL**

VIRGINIA SANDERS  
APPELLANT DEFENSE COUNSEL  
P.O. BOX 926  
NORMAN, OK 73070  
COUNSEL FOR PETITIONER

NO RESPONSE REQUIRED

**OPINION BY: SMITH, J.**

C. JOHNSON, P.J.: CONCUR  
A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR IN RESULT  
LEWIS, J.: CONCUR IN RESULT

RA/F