

FILED
 IN COURT OF CRIMINAL APPEALS
 OF THE STATE OF OKLAHOMA
JUN 19 2007
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ANDREW DEON BOWIE,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

MICHAEL S. RICHIE
) CLERK

) NOT FOR PUBLICATION

) Case No. C-2006-1110

SUMMARY OPINION GRANTING PETITION FOR CERTIORARI

CHAPEL, JUDGE:

Andrew Deon Bowie was charged in the District Court of Tulsa County, Case No. CF-2005-5631, by Information, with Robbery with Firearm, under 21 O.S.2001, § 801 (Count I).¹ On January 23, 2006, at the conclusion of the preliminary hearing, Bowie was bound over for trial on Assault and Battery with a Dangerous Weapon, 21 O.S.2001, § 645 (Count II), and also on Burglary in the First Degree, 21 O.S.2001, § 1431 (Count III). On September 5, 2006, before the Honorable Clancy Smith and pursuant to a plea agreement, Bowie entered a plea of guilty to Counts I and III and was sentenced to imprisonment for thirty (30) years and a fine of \$500 on Count I and imprisonment for twenty (20) years and a fine of \$250 on Count III, with the sentences to be served concurrently with

¹ Bowie was charged in Count I along with two co-defendants, Arthur Lee Zachary, Jr. and Bennie Lee Denson IV. The original Information also charged Zachary with assault and battery with a dangerous weapon (Count II). The case against Denson was dismissed, at the State's request, on June 5, 2006. Zachary's case went to trial in July of 2006. Zachary was convicted of Robbery with Firearm AF2CF and sentenced to imprisonment for 23 years. His case is currently on appeal before this Court, F-2006-825.

each other and with CF-2005-5630.² Bowie is now properly before this Court on a petition for certiorari.

Bowie raises the following proposition of error in support of his petition:

MR. BOWIE WAS DEPRIVED OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT THE HEARING ON THE MOTION TO WITHDRAW HIS PLEAS OF GUILTY. ADDITIONALLY, THE TRIAL COURT'S REFUSAL TO APPOINT CONFLICT-FREE COUNSEL TO REPRESENT PETITIONER RESULTED IN REVERSIBLE ERROR.

The record in this case reveals that Bowie was attempting to challenge (among other things) the effectiveness of his counsel regarding the taking of his guilty pleas. In *Carey v. State*, this Court held that a “criminal defendant is entitled to effective assistance of counsel at a hearing on the motion to withdraw his guilty plea.”³ We also recognized that this right “includes the correlative right to representation that is free from conflicts of interest.”⁴

In the current case, the trial court’s failure to appoint new counsel for Bowie on his motion to withdraw his pleas created an actual conflict of interest that prevented Bowie from receiving effective assistance of counsel at the hearing on this motion.⁵ As in *Carey*, defense counsel’s failure to pursue Bowie’s motion, particularly his statements suggesting that Bowie’s motion should be denied, placed defense counsel in the position of “adversary” to his client and left Bowie

² Bowie was also ordered to pay a Victim Compensation Assessment of \$250 on Count I. Count II was dropped when Bowie pled guilty.

³ *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, 1117 (citations omitted).

⁴ *Id.* at ¶ 8, 902 P.2d at 1118 (citations omitted).

⁵ *Id.* at ¶¶ 9-10, 902 P.2d at 1118. We noted in *Carey* that in such situations, where an “actual conflict of interest adversely affected [the] lawyer’s performance,” the defendant does not need to show prejudice. *Id.* at ¶ 10, 902 P.2d at 1118 (citations omitted).

with no one to represent him at the hearing on this motion.⁶

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that the current petition for certiorari should be granted and that this case should be remanded to the district court for appointment of new counsel.

Decision

The Petition for a Writ of Certiorari is **GRANTED**, and this case is **REMANDED** to the district court **FOR APPOINTMENT OF NEW COUNSEL** to represent Bowie on an application to withdraw his guilty pleas, in accordance with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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⁶ Id. at ¶ 10, 909 P.2d at 1118. The State argues that Bowie did not sufficiently argue his allegations at the hearing on his motion to withdraw his pleas and that his pro se filings did not contain "specific allegations of ineffectiveness," which would render his pleas involuntary. (The State also asserts that Bowie "failed to bring any of the allegations contained in his pro se Notice of Appeal to the court's attention," though the record reflects that this filing was discussed at the hearing on his motion to withdraw his pleas.) The State misses the point. Bowie never asserted that he desired to represent himself or that he wanted to proceed pro se. Rather, when his appointed counsel stopped acting on his behalf in pursuit of a motion to withdraw his pleas, Bowie simply sought to fill in the void through his own actions.

OPINION BY: CHAPEL, J.

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

LUMPKIN, P.J.: DISSENTS

I respectfully dissent to the Court's decision to grant the writ of certiorari. Petitioner's claim of ineffective assistance of counsel was not raised in the application to withdraw guilty plea filed in the District Court. Therefore, the issue is not properly before the Court. Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006). See also *Fields v. State*, 1997 OK CR 53, ¶¶ 6-7, 946 P.2d 266, 269. Reviewing only for plain error, we find no evidence in the record to support Petitioner's claim. His bald assertions of a conflict of interest made after the fact are not sufficient to warrant withdrawal of the plea.