

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

NOV 19 2009

JOHNNY CLYDE BUTLER,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

MICHAEL S. RICHIE
CLERK

Case No. C-2009-410

ORDER REMANDING FOR EVIDENTIARY HEARING

On December 17, 2008, Petitioner pled guilty to the crime of Possession of a Controlled Dangerous Substance (methamphetamine), in violation of 63 O.S.2001, § 2-402, in Pottawatomie County District Court case no. CF-2008-112. As part of the plea deal, a second count for Petit Larceny was dropped and Petitioner was to be sentenced to ten years imprisonment "to do." Sentencing consistent with that agreement occurred on April 1, 2009.

On April 9, 2009, Petitioner moved, *pro se*, to withdraw his guilty plea on the basis that the trial judge had failed to follow the plea agreement. In a letter filed contemporaneously therewith, Petitioner alleged he had not received the five year sentence that had been agreed upon between him, his attorney, and the District Attorney. However, the record is void of any evidence that an evidentiary hearing was held in regard to Petitioner's motion to withdraw plea. Rather, it appears that the motion was summarily rejected by an order from the District Court Judge and that Petitioner's counsel was not given the

opportunity to present Petitioner's case. Instead, Petitioner's counsel was simply mailed a copy of the order.

Petitioner then filed this appeal to the trial court's denial of his motion to withdraw plea. He raises the following propositions of error in support of his Petition for Writ of Certiorari:

1. The trial court erred by failing to hold a hearing on the motion to withdraw plea;
2. Petitioner should be allowed to withdraw his plea as there was no sufficient factual basis for the guilty plea;
3. The trial judge failed to inquire into Petitioner's competence to enter the plea;
4. Petitioner did not receive effective assistance of counsel;
5. The trial court erred by imposing an unsupported sentence of restitution to be paid by Petitioner;
6. The sentence and fine were excessive; and
7. Cumulative errors deprived Petitioner of a fair hearing and due process of law.

Having thoroughly reviewed the record before us, we find the case should be remanded to the trial court for an evidentiary hearing with respect to the motion to withdraw guilty plea. See Rule 4.2(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009) (“[t]he trial court shall hold an evidentiary hearing and rule” on a motion or application to withdraw guilty plea within thirty (30) days from the day it was filed). The evidentiary hearing shall be limited to the issue raised in the motion to withdraw the plea filed with the District Court. *Id.* (“[n]o matter may be raised in the petition for a writ of

certiorari unless the same has been raised in the application to withdraw the plea"). The sole issue raised in the Motion to Withdraw Plea was "the presiding Judge in this matter failed to follow the plea agreement." (O.R. 78) Further, Petitioner shall be afforded the assistance of counsel at the evidentiary hearing.

The trial court shall conduct the evidentiary hearing within forty five (45) days from the date of this remand. If the trial court denies the Motion to Withdraw Plea, the trial court's order and transcripts of the hearing shall be filed with this Court within twenty (20) days of the evidentiary hearing. The Petitioner, within twenty (20) days from the date the order and transcripts are filed with this Court, may file his Petition for Writ of Certiorari that complies with the Rules of this Court. If the Motion to Withdraw the Plea is granted, a copy of the trial court's order shall be filed with this Court.

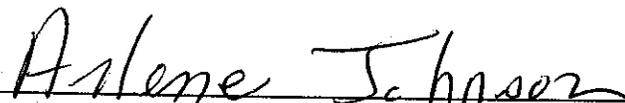
With respect to propositions of error two through seven, the issues raised therein are moot.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day
of November, 2009.



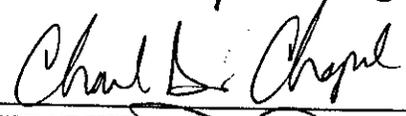
CHARLES A. JOHNSON, Presiding Judge



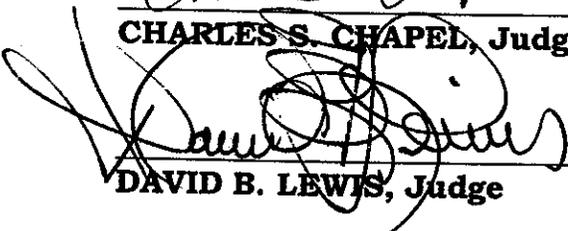
ARLENE JOHNSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge

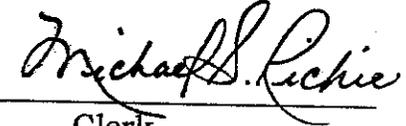


CHARLES S. CHAPEL, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk