

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

MARCUS D. CARTER,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. C-2007-821
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

**SUMMARY OPINION GRANTING CERTIORARI**

**A. JOHNSON, JUDGE:**

Petitioner Marcus D. Carter entered a negotiated plea of no contest in the District Court of Oklahoma County, Case No. CF-2006-4937, to Failure to Comply with Sex Offender Registration Act in violation of 57 O.S.Supp.2006, § 587. The Honorable Tammy Bass-LeSure accepted Carter’s plea and sentenced him to five years imprisonment to be served concurrently with his sentence in Case No. CF-2002-828. Carter filed a timely motion to withdraw his no contest plea. The district court held the prescribed hearing and denied his motion. Carter appeals the district court’s order and asks this Court to issue a Writ of Certiorari remanding this matter to the District Court for a complete evidentiary hearing on the merits of his motion with the assistance of effective, conflict free counsel.

This case raises the following issues:

1. Whether Carter was denied due process because the trial court failed to hold the mandatory hearing on his motion to withdraw plea within thirty days of its filing.

2. Whether Carter was denied his right to conflict-free counsel.

We find this case must be remanded for a new hearing on Carter's motion to withdraw plea for the reasons discussed below.

1.

This Court's review is limited to two inquiries in a certiorari appeal: (1) whether the guilty plea was made knowingly and voluntarily; and (2) whether the district court accepting the guilty plea had jurisdiction to accept the plea. *Cox v. State*, 2006 OK CR 51, ¶ 4, 152 P.3d 244, 247. Carter's claim that he was denied due process because his hearing was not held timely is not reviewable in this appeal. This claim is denied.

2.

A defendant has a Sixth Amendment right to effective assistance of counsel at a hearing on a motion to withdraw a guilty plea. *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, 1118. The right to effective assistance is violated when an actual conflict of interest exists between an attorney and client. *See id.* Part of Carter's claim at the hearing on his motion to withdraw plea was that his attorney coerced his plea and misadvised him about the range of punishment, rendering his plea involuntary. Rather than swear in Carter and question him about his claim or move to withdraw, his attorney allowed the trial court to examine Carter during the hearing with questions and commentary designed to show that his plea was knowing and voluntary. His attorney stood mute throughout the entire proceeding because the attorney was faced with the dilemma of either trying to prove her client's case that she

was ineffective or disputing his claim. Based on these circumstances, we find that the record supports a finding of conflict and remand this matter for a new hearing on Carter's application with conflict-free counsel.

**DECISION**

The Petition for a Writ of Certiorari is **GRANTED**. This matter is **REMANDED** to the district court for a hearing on Carter's application to withdraw plea consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE TAMMY BASS-LESURE, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY: A. JOHNSON, J.**  
**LUMPKIN, P.J.: Concur**  
**C. JOHNSON, V.P.J.: Concur**  
**CHAPEL, J.: Concur**  
**LEWIS, J.: Concur**

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