

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARCUS JERMAINE CHRISTON, )  
)  
Petitioner, )  
v. )  
THE STATE OF OKLAHOMA )  
)  
Respondent. )

MICHAEL S. RICHIE  
CLERK

Case No. C-2010-695  
Not for Publication

**SUMMARY OPINION GRANTING PETITION FOR CERTIORARI**

**SMITH, JUDGE:**

Marcus Jermaine Christon was charged by Information, on March 15, 2010, in the District Court of Oklahoma County, Case No. CF-2010-1811, with Burglary in the First Degree, under 21 O.S.2001, § 1431 (Count I); Conspiracy to Commit Burglary in the First Degree, under 21 O.S.2001, §§ 421, 1431 (Count II); Concealing Stolen Property, under 21 O.S.2001, § 1713 (Count III); Larceny of an Automobile, under 21 O.S.Supp.2002, § 1720 (Count IV); and Possession of CDS (Methamphetamine), under 63 O.S.Supp.2009, § 2-402 (Count V).<sup>1</sup>

According to the district court docket, preliminary hearing was held in Christon's case on May 3, 2010, although there is no transcript in the record of this hearing.<sup>2</sup> On June 18, 2010, Christon entered an agreed plea of guilty before the Honorable Donald L. Deason, District Judge, to Counts I, III, IV, and V

<sup>1</sup> Christon was charged along with co-defendants, Derrick Rayvonn Childers and Jermaine Alfred Blakely. Childers was charged in Counts I, II, III, & IV. Blakely was charged in Counts I and II. A second page was filed against Christon alleging two prior felony convictions: second-degree burglary and concealing stolen property, both in 2008 and from the same 2007 case.

<sup>2</sup> Christon was bound over on Counts I, III, and V (all AFCE); Count IV was amended to Second-Degree Burglary AFCE; and Count II was dismissed on the State's motion.

as originally charged, all AFCF, based on one prior felony.<sup>3</sup> Christon was sentenced that same day by the Honorable Donald L. Deason, in accord with the agreement stated on the plea form, to imprisonment for 10 years on each of Counts I, III, IV, and V, to all run concurrently, with credit for time served.<sup>4</sup>

On June 22, 2010, Christon wrote a pro se letter to the trial court asking to be allowed to “appeal” his guilty plea. Christon asserted in his letter that his public defender counsel “tricked” him into pleading to a “10 violent” offense, when he thought he was pleading to a “10 non-violent.”<sup>5</sup> On July 12, 2010, the Honorable Donald L. Deason held a hearing on this “motion to withdraw plea of guilty.” At the hearing, which was transcribed, the following exchange occurred:

THE COURT: You wrote this letter yourself, Mr. Christon, and I assume you are representing yourself for the purpose of this hearing?

DEFENDANT: Representing myself?

THE COURT: Well, you indicate, in this letter, that Mr. Bedford tricked you into pleading, so I don’t really think that he’s in the position to represent you today.

DEFENDANT: Yes, sir.

Although Christon’s appointed counsel remained present during the hearing, he apparently provided no assistance to Christon and only spoke up once.<sup>6</sup> At the end of the hearing, the court denied the motion. Christon then filed the current petition for certiorari, which is properly before this Court.

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<sup>3</sup> The hearing at which Christon pled guilty was not transcribed. Christon’s appointed counsel on his guilty plea was assistant public defender David Bedford.

<sup>4</sup> Christon was also ordered to pay costs, fees, and a Victim Compensation Assessment (VCA) of \$225, although the plea form stated that the VCA would be \$45. According to the plea form, the State agreed not to revoke in Christon’s prior case, CF-2007-618. Christon’s conviction on Count I is subject to the 85% Rule, under 21 O.S. Supp.2009, § 13.1, which is part of his claim herein.

<sup>5</sup> Christon asserts in his letter that he wouldn’t have agreed to and “can’t do a 10 violent,” because he is only 22 years old and has a 4-year-old daughter that he wants to see.

<sup>6</sup> Counsel spoke up at the very end of the hearing, when Christon did not understand the court’s reference to “place of confinement,” with the single-word, clarifying remark of “Prison.”

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

- I. MR. CHRISTON WAS DEPRIVED OF HIS FUNDAMENTAL RIGHT TO THE ASSISTANCE OF CONFLICT FREE COUNSEL WHEN HE WAS BROUGHT BEFORE THE COURT IN VIOLATION OF THE FEDERAL AND STATE CONSTITUTIONS.

Christon asserts that his right to conflict-free assistance of counsel was violated when the trial court failed to appoint him new counsel on his motion to withdraw his plea, even though he was asserting ineffective assistance and a conflict of interest (that his counsel had “tricked” him regarding his plea) as the basis for his attempt to withdraw his plea. In *Randall v. State*, 1993 OK CR 47, ¶¶ 5-7, 861 P.2d 314, 316, this Court held that a defendant is entitled to the assistance of counsel on a motion to withdraw a guilty plea and at the evidentiary hearing on such a motion. In *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, we further held that this right to counsel includes the right to the *effective* assistance of counsel, which “includes the correlative right to representation that is free from conflicts of interest.” *Id.* at ¶ 8, 902 P.2d at 1118 (citation omitted). And an “actual conflict of interest” exists where the defendant is asserting that his attorney’s ineffectiveness or coercion resulted in an invalid plea—yet this same attorney still represents the defendant.<sup>7</sup> Since *Carey*, this Court has maintained that when a defendant asserts ineffective assistance as the reason that a guilty plea is invalid, the trial court should automatically appoint new conflict-free counsel on the motion to withdraw the plea.

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<sup>7</sup> See *Carey*, 1995 OK CR 55, ¶ 10, 902 P.2d at 1118; *Oklahoma Rules of Professional Conduct*, Rule 1.7, 5 O.S.2001, Ch. 1, App. 3-A (unless certain conditions are met, including written “informed consent” by client, “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest,” which includes situations where “there is a significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer”).

The transcript of the plea withdrawal hearing in this case reveals that the trial court's failure to appoint new counsel for Christon left him totally without the assistance of counsel. Christon never suggested that he wanted to proceed *pro se*, never waived his right to the assistance of counsel, and never waived his right to appointed counsel. He was indigent, asserted that he had been "tricked" by his counsel into pleading guilty to an 85% offense, and should have been appointed new counsel on his motion to withdraw his plea—whether or not his claim of not being properly informed turns out to be true.

Even though defense counsel never asked to withdraw and the record does not contain a request for new counsel, the trial court should have recognized the actual conflict of interest that existed in this case. This Court is not making any finding on the validity of Christon's attempt to withdraw his plea. We simply find that he was entitled to effective and conflict-free representation on his motion.

The trial court is ordered to appoint new, conflict-free counsel to represent Christon on his motion to withdraw his guilty plea and on the evidentiary hearing on this motion. And this case is remanded for a new hearing on this motion.<sup>8</sup>

### **Decision**

The Petition for a Writ of Certiorari is **GRANTED** and this case is **REMANDED** to the trial court for the appointment of new counsel and a new hearing on Christon's motion to withdraw his plea consistent with this opinion.

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<sup>8</sup> There is no reason to request an answer from the State, as both the law on this issue and the record in this case are clear.

**ATTORNEYS IN DISTRICT COURT**

DAVID BEDFORD  
ASSISTANT PUBLIC DEFENDER  
611 COUNTY OFFICE BUILDING  
320 ROBERT S. KERR AVE.  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR DEFENDANT AT  
GUILTY PLEA

DEANNA HOLT  
ASSISTANT DISTRICT ATTORNEY  
505 COUNTY OFFICE BUILDING  
320 ROBERT S. KERR AVE.  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR STATE

**OPINION BY: SMITH, J.**

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

**ATTORNEYS ON APPEAL**

JAY D. HUSBANDS  
ASSISTANT PUBLIC DEFENDER  
611 COUNTY OFFICE BUILDING  
320 ROBERT S. KERR AVE.  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR PETITIONER

NO RESPONSE REQUIRED