

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

RODDY MAURICE CHURCHILL )

NOT FOR PUBLICATION

Petitioner, )

v. )

Case No. C-2009-69

THE STATE OF OKLAHOMA, )

Respondent. )

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG 18 2009

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**  
**GRANTING CERTIORARI**

**C. JOHNSON, PRESIDING JUDGE:**

Petitioner was charged in Caddo County District Court with Use of a Vehicle in Discharge of a Weapon and Assault and Battery on a Police Officer in Case No. CF-2007-111, and Unlawful Possession of a Narcotic with Intent to Distribute Within 1,000 Feet of a Daycare in Case No. CF-2008-154. Petitioner entered a negotiated plea of guilty to the amended charges of Assault with a Dangerous Weapon and Resisting an Officer in Case No. CF-2007-111, and Possession of Controlled Dangerous Substance in Case No CF-2008-154. He was sentenced to six years imprisonment on the assault conviction, one year in the county jail for resisting an officer, and nine years suspended for possession of CDS. The sentences in Case No. CF-2007-111 were ordered to run concurrently with each other and consecutive to the suspended sentence imposed in Case No. CF-2008-154. Petitioner filed a Motion to Withdraw Guilty Plea. At the conclusion of a hearing on this motion, his request was denied. It is from this ruling that Petitioner appeals to this Court.

Petitioner raises the following propositions of error:

1. Mr. Churchill was denied effective assistance of counsel.
2. The judge erred in failing to end the hearing and appoint conflict counsel.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and brief of Petitioner, we remand this case to the district court for a proper hearing on the motion to withdraw. Petitioner alleges that he was denied his constitutional right to the effective assistance of counsel during the hearing on the motion to withdraw his guilty plea because he was represented at the hearing by counsel with whom he had conflicting interests. His attorney at the hearing on the motion to withdraw was the same attorney who had represented him when he entered his plea. Although Petitioner did not object to the conflict of interest at the hearing on the motion to withdraw, the record supports a finding that an actual conflict of interest adversely affected his lawyer's performance. After Petitioner testified that he was incorrectly advised that he would get paroled after serving 25% of his sentence, defense counsel asked no further questions about this claim and made no further reference to it. Rather, he asked Petitioner questions to elicit information that he had advised Petitioner what would happen if he was allowed to withdraw his plea. Petitioner was denied his Sixth Amendment right to effective assistance of counsel at the hearing on the motion to withdraw as his defense counsel defended his own interests rather than those of his client. See *Carey v. State*, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118. Thus, this case must be remanded to the district court for a

proper hearing on the motion to withdraw in which Petitioner may be represented by conflict-free counsel.

### DECISION

The Petition for Writ of Certiorari is **GRANTED**, and the cause **REMANDED** to the district court for a proper hearing on the Motion to Withdraw Guilty Plea. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CADDO COUNTY  
THE HONORABLE RICHARD VAN DYCK, DISTRICT JUDGE

#### APPEARANCES AT PLEA WITHDRAWAL HEARING

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ATTORNEY FOR DEFENDANT

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CADDO COUNTY COURTHOUSE  
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ATTORNEY FOR THE STATE

#### OPINION BY C. JOHNSON, P.J.

A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
CHAPEL, J.: CONCUR  
LEWIS, J.: CONCUR

#### APPEARANCES ON APPEAL

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