

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

JOSEPH LEONARD COX, JR.,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

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) NOT FOR PUBLICATION  
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) Case No. C-2013-309  
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) **FILED**  
) **IN COURT OF CRIMINAL APPEALS**  
) **STATE OF OKLAHOMA**

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)  
) FEB 11 2014

**SUMMARY OPINION DENYING CERTIORARI**

**MICHAEL S. RICHIE**  
**CLERK**

**A. JOHNSON, JUDGE:**

Petitioner Joseph Leonard Cox, Jr. entered a negotiated plea to resolve two cases in the District Court of Osage County. In Case No. CF-2011-82, Cox pled guilty to one count of Possession of Controlled Dangerous Substance, (Methamphetamine), After Former Conviction of Two or More Felonies (Count 1) in violation of 63 O.S.2011, § 2-402(B)(1), two counts of Possession of Controlled Dangerous Substance, Misdemeanor (Counts 2 & 3), in violation of 63 O.S.2011, § 2-402(B)(2), and one count of Possession of Paraphernalia (Count 4), in violation of 63 O.S.2011, § 2-405. In Case No. CF-2012-454, Cox pled guilty to one count of Possession of Contraband (Count 1), in violation of 57 O.S.Supp.2012, § 21(B). The Honorable M. John Kane, IV accepted Cox's plea and sentenced him according to the plea agreement, specifically in Case No. CF-2011-82 ten years imprisonment and a \$200 fine on Count 1 and a \$100 fine on each of Counts 2, 3, and 4, and in Case No. CF-2012-454 five years imprisonment. The district court assessed Cox various court costs in

each case, gave him credit for time served, and ordered the sentences to run concurrently with each other.<sup>1</sup> In addition, the district court accepted Cox's stipulation to the State's Motion to Revoke Suspended Sentence in Case No. CF-2010-51, and sentenced Cox to twenty years in prison, running concurrently with Cox's sentences in CF-2011-82 and CF-2012-454.<sup>2</sup> Cox wrote a letter to his trial attorney that was filed of record and interpreted as a motion to withdraw plea. The district court appointed conflict counsel, held a hearing and denied the motion.<sup>3</sup> Cox appeals the order denying his motion and petitions this Court for a Writ of Certiorari allowing him to withdraw his plea and proceed to trial.

Cox raises the following issues:

- (1) whether he should be allowed to withdraw his plea of guilty because the plea was coerced and not knowingly and intelligently entered;
- (2) whether he received effective assistance of counsel during the plea proceedings;
- (3) whether a new hearing on the motion to withdraw plea is required because defense counsel failed to advocate Cox's cause, forcing him to proceed without the benefit of counsel; and
- (4) whether this case should be remanded to the district court with instructions to correct the Judgment and Sentence by an Order *Nunc Pro Tunc* to reflect credit for time served.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

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<sup>1</sup> As part of the plea agreement, the State dismissed Case No. CF-2012-274.

<sup>2</sup> Cox does not challenge the revocation of his suspended sentence in this appeal, but has filed a separate appeal (Case No. RE-2013-848) that has not yet been submitted to the Court for review because briefing has not been completed.

<sup>3</sup> Conflict counsel filed a formal motion to set aside plea.

**1.**

The district court's ruling denying Cox's motion to withdraw plea because he failed to present sufficient evidence that his plea was coerced is supported by the record. We find no abuse of discretion. See *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251; *Elmore v. State*, 1981 OK CR 8, ¶ 8, 624 P.2d 78, 80.

**2.**

We reject Cox's claim that conflict defense counsel rendered ineffective assistance of counsel during the plea process, specifically the hearing on the motion to withdraw plea. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Malone v. State*, 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206, cert. denied, \_\_\_U.S.\_\_\_, 134 S.Ct. 172, \_\_\_L.Ed.2d\_\_\_(2013); *Head v. State*, 2006 OK CR 44, ¶ 23, 146 P.3d 1141, 1148. He has not shown on this record that defense counsel's failure to present a double jeopardy claim, argue the sufficiency of the evidence and present a possible defense or prepare and present evidence to support his claim of coercion affected the outcome of the hearing. This claim is denied.

**3.**

Nor do we find that Cox is entitled to a new evidentiary hearing based on a denial of, or ineffective assistance of, counsel. The record shows the district court appointed Cox conflict counsel for the evidentiary hearing. Contrary to Cox's claim, conflict counsel did not abandon him leaving him without counsel, but advocated his claim of coercion. Cox fails to identify what other evidence

defense counsel could have presented to support the motion. A new evidentiary hearing is not warranted.

4.

We remand this matter to the district court with instructions to amend the Judgment and Sentence to reflect credit for time served so it conforms with the district court's oral pronouncement of sentence. *See Jacobs v. State*, 2006 OK CR 4, ¶¶ 2-3, 128 P.3d 1085, 1086 (remanding for *nunc pro tunc* correction to judgment and sentence to show that defendant's sentences should run concurrently because judgment and sentence must properly reflect sentence pronounced), *Lemay v. Rahhal*, 1996 OK CR 21, ¶ 20, 917 P.2d 18, 22 ("The sentence orally pronounced from the bench is the sentence. One of the purposes of the written judgment and commitment order is to provide evidence of the sentence" (quoting *United States v. Villano*, 816 F.2d 1448, 1451)).

**DECISION**

The Petition for a Writ of Certiorari is **DENIED**. The Judgment and Sentence of the District Court is **AFFIRMED**. The case is **REMANDED** to the district court with instructions to amend the Judgment and Sentence to reflect credit for time served. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OSAGE COUNTY  
THE HONORABLE M. JOHN KANE, IV, DISTRICT JUDGE

**APPEARANCES IN THE  
DISTRICT COURT**

GLENN DAVIS  
ROD RAMSEY  
117 W. FIFTH STREET, SUITE 402  
BARTLESVILLE, OK 74003  
ATTORNEYS FOR DEFENDANT

DIANE HAMMER  
MIKE FISHER  
ASSISTANT DISTRICT ATTORNEYS  
628 ½ KIHEKAH, THIRD FLOOR  
PAWHUSKA, OK 74056  
ATTORNEYS FOR STATE

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

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**APPEARANCES ON APPEAL**

KATRINA CONRAD-LEGLER  
P. O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR PETITIONER