

FILED
 IN COURT OF CRIMINAL APPEALS
 IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
 JAN 13 2005

MICHIAL ALLEN COX,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

)
 MICHAEL S. RICHIE
) CLERK

) NOT FOR PUBLICATION
) Case No. C-2004-563
)
)
)

SUMMARY OPINION GRANTING CERTIORARI AND REMANDING FOR NEW HEARING ON APPLICATION TO WITHDRAW PLEA OF GUILTY

CHAPEL, JUDGE:

Michial Cox pled guilty to two counts of Lewd Molestation in violation of 21 O.S.2001, § 1123 and three counts of Sexual Battery in violation of 21 O.S.2001 §1123(B) in Washita County District Court, Case No. CF-2003-7. After a hearing on April 22, 2004, the Honorable Charles L. Goodwin sentenced Cox to ten (10) years' imprisonment with five (5) years suspended on each of the two counts of Lewd Molestation and five (5) years' imprisonment on each of the three counts of Sexual Battery. The sentences were ordered to be served concurrently. Cox timely filed an Application to Withdraw Plea on May 3, 2004, which was denied after a May 20, 2004 hearing. Cox timely appealed to this Court on May 27, 2004.

Cox raises the following propositions of error:

- I. Mr. Cox should be allowed to withdraw his pleas because the factual bases were insufficient to support them.
- II. In the interest of justice, Mr. Cox should be allowed to withdraw his pleas.

- III. The Court's imposition of the maximum sentences for the sexual batteries and ten years for the lewd molestation counts was excessive.
- IV. If Mr. Cox is not allowed to withdraw his pleas, the case should be remanded for a new sentencing hearing because Petitioner was not truly represented by counsel.
- V. Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel in pursuing his motion to withdraw his guilty plea.

After thorough consideration of the entire appellate record, including the original record, transcripts, briefs and exhibits of the parties, we find that reversal is required because Cox was denied the effective assistance of counsel. Specifically, we find in Proposition V that Cox was denied the effective assistance of counsel due to an attorney-created conflict of interest.¹

Decision

Petitioner's Writ of Certiorari is **GRANTED** and cause **REMANDED** for a proper hearing on the Application to Withdraw Guilty Pleas.

¹ *Carey v. State*, 902 P.2d 1116, 1117 (Okla. Cr. 1995) (conflict of interest found where petitioner alleged trial attorney coerced plea). Here, Cox's attorney refused to be an advocate for him at his hearing to withdraw his guilty plea. Counsel's actions and statements reveals that he felt assisting Cox would be inconsistent with his own prior affirmations, leaving Cox to seek withdrawal of his pleas on his own. The trial attorney had to choose between arguing for his client or himself. His choice of the latter forced Cox to advocate his own position.

ATTORNEYS AT TRIAL

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OPINION BY: CHAPEL, J.
JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULTS

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LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN RESULT

While a review of the record presented with this Petition for Writ of Certiorari reveals a procedurally valid and factually supported plea of guilty in all aspects, it appears Petitioner proceeded without the benefit of counsel during the hearing on the Application to Withdraw the Plea of Guilty. Regrettably, counsel ceased to be an advocate and left it up to Petitioner to make his own arguments. If counsel believed he could not advocate for the Petitioner's position on the issues to be raised, he should have moved to withdraw as counsel to ensure conflict-free counsel could have been appointed for that hearing. *Randall v. State*, 1993 OK CR 47, 861 P.2d 314. I must therefore concur with the limited scope of this opinion which merely remands the case to the district court for a new hearing on the existing Application to Withdraw Plea of Guilty where Petitioner is afforded the benefit of effective assistance of conflict-free counsel as required pursuant to *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1968).