

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

LAMARR RAYMOND DENNIS,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

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) **NOT FOR PUBLICATION**
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) **Case No. C-2001-665**
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FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 20 2002

JAMES W. PATTERSON
CLERK

SUMMARY OPINION GRANTING CERTIORARI

LUMPKIN, PRESIDING JUDGE.:

Petitioner Dennis was charged in Tulsa County case number CF-00-249 with three counts of Sexual Abuse of a Minor Child, after former conviction of two felonies. On March 5, 2001, a plea agreement was reached whereby the charges were amended to one count of indecent exposure (21 O.S.Supp.1999, § 1021), after two former felony convictions. Petitioner pled guilty to that offense and was sentenced to twenty (20) years imprisonment, i.e., the minimum sentence available, on April 16, 2001. Nine days later, he filed a motion to withdraw guilty plea, which was later denied on May 16, 2001. Petitioner now appeals from the trial court's denial of his motion to withdraw guilty plea.

Petitioner raises the following propositions of error in support of his Petition for Writ of Certiorari:

- I. Petitioner was misled to think he would have to serve eighty-five percent of any sentence resulting from trial, when such was not the case; and
- II. The District Court breached the plea bargain by imposing a fine which was not part of the agreement.

After considering these propositions and the entire record, including the original record, transcripts, and briefs of the parties, we find certiorari should be granted and Petitioner should be allowed to withdraw his guilty plea.

We find no merit in proposition two. However, with respect to proposition one, we find the transcript of Petitioner's plea hearing reflects Petitioner was misinformed regarding the application of 21 O.S.Supp.1999, §§ 12.1 and 131 to his case. That erroneous information appears to have been a factor in his decision to plead guilty to indecent exposure, rather than go to trial on three counts of sexual abuse of a minor.

It is not required that a defendant be informed of restrictions on parole eligibility prior to entering a plea. Nevertheless, when a defendant is in fact informed of restrictions on his parole eligibility and that information appears to have been a factor in his decision to plead guilty to a lesser charge, it cannot be said that his plea was entered knowingly and voluntarily when that information proves to be incorrect in such a manner as occurred here.¹

Here, Petitioner testified at the plea hearing that the erroneous information "kind of swayed my decision" and he thus pled guilty to a lesser crime that would not fall under the 85% rule. He also, however, testified that he had at one point lied under oath, and so it is difficult to place much weight

¹ Petitioner was told by his attorney, the State's attorney, and the trial judge that his pending charges for sexual abuse of a minor were subject to the statutory 85% rule, i.e., he would not be eligible for parole until 85% of his sentence was served. In reality, the 85% rule only applied to offenses committed on or after March 1, 2000. Petitioner's charges were allegedly committed

on his testimony that the erroneous information swayed his decision to a significant degree.

However, a close reading of the plea transcript indicates Petitioner was very concerned about the amount of time he would serve and whether or not he would be parole eligible if he took the plea offer. The erroneous information he received in response to his questions requires us to find his plea was not knowingly and voluntarily entered. *King v. State*, 553 P.2d 529 (Okl.Cr.1976).

DECISION

The Petition for Certiorari is hereby **GRANTED**, Petitioner's conviction is hereby **VACATED**, and this matter is **REMANDED** to the District Court with instructions to allow Petitioner to withdraw his guilty plea.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE DAVID L. PETERSON, DISTRICT JUDGE

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on or before September 3, 1999.

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

RB.