

IN THE COURT OF CRIMINAL APPEALS MAR 28 2019
OF THE STATE OF OKLAHOMA JOHN D. HADDEN,
CLERK

DENISA DAWN DUVALL,)	<u>NOT FOR PUBLICATION</u>
)	
Petitioner,)	
)	
v.)	Case No. C-2018-648
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

SUMMARY OPINION GRANTING CERTIORARI AND
REMANDING FOR A NEW HEARING ON
THE MOTION TO WITHDRAW PLEA

LEWIS, PRESIDING JUDGE:

Denisa Dawn Duvall, Petitioner, entered a negotiated plea of no contest to Count 1, domestic assault and battery in the presence of a minor, a misdemeanor, in violation of 21 O.S.Supp.2014, § 644(G), in the District Court of Kay County, Case No. CM-2018-136. The Honorable David R. Bandy, Associate District Judge, accepted the plea and ordered a two-year deferred sentence under terms, including one year of DA supervision, up to fifty-two (52) weeks of domestic violence counseling, random urinalysis testing, and various costs and fees with payments deferred for six months.

Duvall filed a *pro se* motion to withdraw the plea that included a request for an attorney. The district court denied the motion to withdraw plea after an evidentiary hearing wherein Duvall again appeared *pro se*. There is no record indicating whether she was offered counsel as requested, nor is there evidence of a waiver of right to counsel. The trial court did appoint counsel to help Duvall timely file the instant appeal.

Duvall now seeks the writ of certiorari in the following proposition of error:

Petitioner was denied assistance of counsel when attempting to withdraw her plea.

In most cases, this Court reviews the denial of a motion to withdraw a guilty plea for abuse of discretion. In doing so, this Court's only concern is whether the plea was entered knowingly and voluntarily, and whether the district court accepting the plea had jurisdiction to accept the plea. *Weeks v. State*, 2015 OK CR 16, ¶¶ 11-13, 362 P.3d 650, 653-54. In other cases, this Court will take remedial action when Constitutional standards are not met.

Our review of Duvall's proposition of error prompted this Court to direct the State to respond to Petitioner's brief in this Certiorari

appeal. The State filed its response on January 24, 2019. In its response brief, the State concurs that Duvall did not receive counsel at the withdrawal proceedings as mandated by the Sixth Amendment to the United States Constitution.

The hearing on the motion to withdraw plea, which is required by Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), is a critical stage of a criminal prosecution which invokes a defendant's right to effective, conflict-free counsel. *Carey v. State*, 1995 OK CR 55, ¶ 8, 902 P.2d 1116, 1118; *Randall v. State*, 1993 OK CR 47, ¶ 7, 861 P.2d 314, 316. In *Randall*, the petitioner was denied counsel at the withdrawal hearing and this court remanded the case for a proper hearing.

The record clearly reflects that Duvall was not represented, despite her request for counsel, at the hearing. The State concedes that the error cannot be deemed harmless because the court did not properly assess the status of Duvall's representation and she alleges that she did not understand the nature of the charges or the consequences of her plea. Such allegations, the State agrees, are sufficient to warrant a remand for a hearing. *See Randall*, 1993 OK CR 47, ¶ 10, 861 P.2d at 316.

We, therefore, grant the writ of certiorari and remand this case for the appointment of counsel, and direct the trial court to afford Duvall and new counsel an opportunity to file, within twenty (20) days of this order, a motion setting forth all available legal and factual grounds supporting withdrawal of the guilty plea.

We further direct the trial court to conduct an evidentiary hearing on the motion within thirty (30) days of its filing, as required by Rule 4.2(B). In the event that the motion to withdraw the plea is denied, counsel for Duvall shall thereafter timely comply with this Court's Rule 4.2(D) and all other rules for initiating an appeal from any order denying relief in the court below. "No matter may be raised in the petition for a writ of certiorari unless the same has been raised in the application to withdraw the plea, which must accompany the records filed with this Court. Rule 4.2(B).

DECISION

Duvall's Petition for writ of certiorari is **GRANTED**, the trial court's order denying Duvall's motion to withdraw plea is **REVERSED**, and this cause is **REMANDED** to the District Court for a new hearing on Duvall's motion to withdraw plea pursuant to the above guidelines. Pursuant to Rule 3.15, *Rules of the Oklahoma*

Court of Criminal Appeals, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF KAY COUNTY
HONORABLE DAVID R. BANDY, ASSOCIATE DISTRICT JUDGE**

APPEARANCES AT TRIAL

DENISA DAWN DUVALL
PRO SE
(PLEA & WITHDRAWAL)

SHAWNA TAYLOR
ASST. DISTRICT ATTORNEY
201 S. MAIN STREET
NEWKIRK, OK 74647
ATTORNEY FOR THE STATE

OPINION BY: LEWIS, P.J.
KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

APPEARANCES ON APPEAL

CHAD JOHNSN
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR PETITIONER

MIKE HUNTER
ATTORNEY GENERAL
JENNIFER B. WELCH
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR RESPONDENT