

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 14 2003
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CLIFFORD FEASTER,)	MICHAEL S. RICHIE CLERK
)	
Appellant,)	NOT FOR PUBLICATION
v.)	Case No. C-2003-356
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, JUDGE:

On September 18, 1998, Feaster pled guilty in Pittsburgh County District Court Case Nos. F-98-491, F-98-505, F-98-506 and F-98-507 to three Counts of Robbery by Fear, Attempted Robbery, Assault and Battery with a Dangerous Weapon, and Running a Roadblock, After Former Conviction of Two or More Felonies. The Honorable James D. Bland sentenced Feaster to three consecutive forty-five (45) year prison terms on October 23, 1998. Feaster filed a motion to withdraw his plea on November 4, 1998. The district court overruled his motion. Feaster failed to timely appeal but was granted an appeal out of time on March 23, 2003.

Feaster raises the following propositions of error:

- I. The trial court's failure to provide a factual basis requires that Mr. Feaster be allowed to withdraw his guilty pleas.
- II. Mr. Feaster was denied effective assistance of counsel at the motion to withdraw guilty pleas.
- III. The Judgment and Sentence in F-98-491 should be modified to accurately state the judgment imposed.

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 Feaster was denied the effective assistance of counsel. Specifically, we find in Proposition II that Feaster 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.

ATTORNEYS AT TRIAL

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OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: DISSENT
LUMPKIN, J.: DISSENT
STRUBHAR, J.: CONCUR IN RESULTS

¹ *Carey v. State*, 902 P.2d 1116, 1117 (Okla. Cr. 1995) (conflict of interest found where petitioner alleged trial attorney coerced plea). Here, Feaster's attorney refused to be an advocate for Feaster at his hearing to withdraw his guilty plea. He believed that such advocacy would be inconsistent with his prior affirmation: that he had reviewed the plea form with Feaster and signed it on the belief that Feaster understood the nature and consequences of his plea. Trial counsel thus faced a choice between his role as advocate and candor. His selection of the latter value effectively left Feaster to his own devices – a clear violation of the right to counsel.

LILE, VICE-PRESIDING JUDGE: DISSENT

I would deny the Petition. The Motion to Withdraw Plea of Guilty was filed too late under Rule 4.2, Rules of the Oklahoma Court of Criminal Appeals. The trial court is without authority to waive our rules. Title 22, O.S. §1051; *Lyons v. State*, 1912 OK CR 19, 120 P. 665; *Bulloch v. State*, 1976 OK CR 51, 546 P.2d 1031. As a result the district court lost jurisdiction and was without authority to act on the out of time application to withdraw plea. The appeal should be dismissed.

I am authorized to state that Judge Lumpkin joins in this special vote.