

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

RONALD FRANTZ, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION

Case No. C-2013-1046

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

JUL 18 2014

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**  
**GRANTING CERTIORARI**

**C. JOHNSON, JUDGE:**

Petitioner, Ronald Franz, entered a plea of nolo contendere in Murray County District Court, Case No. CF-2012-26, to the crime of Accessory After the Fact to Shooting with Intent to Kill. Frantz was sentenced to twenty-two and one half years imprisonment with all but the first twenty years suspended. On October 15, 2013, Frantz filed an application to withdraw his nolo contendere plea. A hearing was held on Frantz's application on October 24, 2013, and at the conclusion of this hearing the district court denied Frantz's motion to withdraw. Frantz appeals this ruling to this Court.

Frantz raises the following propositions of error:

1. The trial court abused its discretion in not allowing Mr. Frantz to withdraw his no contest plea when it became clear that Mr. Frantz had not understood the role of the prosecutor and judge at the sentencing hearing in the plea process.
2. The sentence imposed was shockingly excessive.
3. The trial court erred in not allowing Mr. Frantz's plea attorney to withdraw and in not appointing new counsel to litigate the motion to withdraw plea, resulting in denial of Mr. Frantz's Sixth Amendment right to effective assistance of counsel.

4. Relief is required by the trial court's failure to determine with certainty whether Frantz was competent to enter the Alford plea.

After thorough consideration of the propositions and the entire record before us on appeal, including the original record, transcripts, and Frantz's brief, we remand this case to the district court for a proper hearing on the motion to withdraw.<sup>1</sup> Frantz alleges that he was denied his constitutional right to the effective assistance of counsel during the hearing on the motion to withdraw his guilty plea because he was represented at the hearing by counsel with whom he had conflicting interests. Petitioner's attorney at the hearing on the motion to withdraw was the same attorney whose counsel, he alleged in his application to withdraw plea, had been constitutionally ineffective. Although Frantz did not object to the conflict of interest at the hearing on the motion to withdraw, the record supports a finding that an actual conflict of interest adversely affected his lawyer's performance.

Frantz was represented at the hearing on the motion to withdraw by the same attorney who had represented him at the plea and sentencing hearings. The transcript of the hearing held on October 24, 2013 reflects that defense counsel did not call Frantz or any other witness to testify at the hearing on the motion to withdraw plea. Counsel did not address Frantz's assertion that he had misinformed Frantz by misrepresenting the agreement about what would happen at the sentencing hearing. Frantz was effectively without assistance of counsel at the hearing on the motion to withdraw, presumably in part because

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<sup>1</sup> Frantz raises four propositions of error in his brief. However, because the error raised in Proposition III requires relief, only that proposition will be addressed in this opinion.

counsel could not have rendered effective assistance at this hearing without calling pointed attention to his alleged ineffective assistance in advising Frantz about entering his plea. *See Carey v. State*, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118. Thus, this case must be remanded to the district court for a proper hearing on the motion to withdraw in which Frantz may be represented by conflict-free counsel.

### **DECISION**

The Petition for Writ of Certiorari is **GRANTED**, and the cause **REMANDED** to the district court for a proper hearing on the Motion to Withdraw Guilty Plea. 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 WALLACE COPPEDGE, DISTRICT JUDGE**

#### **APPEARANCES AT PLEA WITHDRAWAL HEARING**

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ATTORNEY FOR THE STATE

#### **OPINION BY C. JOHNSON, J.**

LEWIS, P.J.: CONCUR  
SMITH, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
A. JOHNSON, J.: CONCUR

#### **APPEARANCES ON APPEAL**

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