

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JEREMY L. GARZA,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. M-2017-739 FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAY 31 2018

SUMMARY OPINION

KUEHN, JUDGE:

In the District Court of Logan County, Case No. CM-2016-18, Appellant, Jeremy L. Garza, while represented by counsel, entered a plea of guilty to Driving under the Influence of Intoxicating Substances, a misdemeanor, in violation of 47 O.S.Supp.2013, § 11-902(A)(5). In accordance with a plea agreement, the Honorable Susan C. Worthington, Special Judge, on September 8, 2016, deferred the imposition of Judgment and Sentence for eighteen (18) months under written conditions of probation.

On March 29, 2017, the State filed an Application to Accelerate Deferred Judgment alleging Appellant failed to report as directed and had not paid certain fines, costs, and supervision fees. Appearing *pro se*, Appellant stipulated to the State's Application, and on July 7, 2017, Judge Worthington sustained the Application and sentenced Appellant to one year in the county jail and a fine of \$600.00.

Appellant timely perfected this appeal from the final order accelerating his deferred sentencing, and wherein he raises a single proposition of error:

The trial court abused its discretion in allowing Appellant to appear *pro se* at the acceleration proceedings without a valid waiver of the right to counsel, in violation of the 14th Amendment to the United States Constitution, [and] Art. II, § 7, of the Oklahoma Constitution.

We **FIND** Appellant's proposition of error to have merit.

The record in this case contains only court minutes of his initial *pro se* appearance on the State's Application and his subsequent stipulation to its allegations. Neither the minutes nor their corresponding docket entries reflect the presence of a court reporter. Transcripts for those proceedings are therefore unavailable. Other than noting his personal appearance *pro se*, neither court minute shows Appellant expressly waiving his right to counsel or that he was advised of his right to an attorney or the waiver thereof. Similarly lacking are the proceedings at sentencing. Consequently, the appeal record is both void of any expressed waiver by Appellant of his right to be represented by counsel in the acceleration proceedings and void of those disclosures and warnings necessary for a defendant's valid waiver of counsel.

A waiver of counsel is valid only if it is done knowingly and voluntarily. A record of the knowing and voluntary waiver is mandatory, and absent a sufficient record, waiver will not be found. We have held repeatedly that the record must show the trial court advised the defendant of the dangers and disadvantages of self-representation to establish a record sufficient to support valid waiver of counsel. The trial court must explain to the defendant the disadvantages of a waiver, including a lack of knowledge and skill as to rules of evidence, procedure and criminal law. Anything less than a record which shows that the defendant rejected the offer of counsel with knowledge and understanding of the perils of self-representation is not waiver.

Braun v. State, 1995 OK CR 42, ¶ 10, 909 P.2d 783, 787 (citations omitted).¹

These requirements are equally applicable in the context of misdemeanor prosecutions.

¹ See also *Lineberry v. State*, 1983 OK CR 115, ¶ 6, 668 P.2d 1144, 1145 ("While this Court has previously held that the right to counsel may be waived, the record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently

A person charged with a misdemeanor in a state court has an unconditional and absolute right to a lawyer. This right may be waived if done knowingly, and intelligently. . . . We have held that the record must show, or there must be an allegation and evidence which shows that an accused was offered counsel but intelligently and understandingly rejected the offer. This record is mandatory and anything else is not waiver.

Bench v. State, 1987 OK CR 191, ¶ 4, 743 P.2d 140, 141 (citations omitted). Additionally, the State concedes in its Answer Brief that a defendant has a right to counsel in acceleration proceedings,² and that there is no record showing a knowing and voluntary waiver of counsel.

DECISION

The July 7, 2017, order accelerating the judgment and sentencing of Appellant, Jeremy L. Garza, in the District Court of Logan County, Case No. CM-2016-18, is **REVERSED** and the matter **REMANDED** with instructions to **VACATE** the Judgment and Sentence and to conduct further proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), **MANDATE IS ORDERED ISSUED** on the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF LOGAN COUNTY,
THE HONORABLE SUSAN C. WORTHINGTON, SPECIAL JUDGE**

APPEARANCES AT TRIAL

JEREMY L. GARZA
APPEARING *PRO SE*

APPEARANCES ON APPEAL

CINDY BROWN DANNER
OKLA. INDIGENT DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OKLAHOMA 73070
ATTORNEY FOR APPELLANT

and understandingly rejected the offer. This record is mandatory and anything less is not waiver.”).

² *Beller v. State*, 1979 OK CR 64, ¶ 4, 597 P.2d 338, 339.

JEREMIAH GREGORY
ASSISTANT DISTRICT ATTORNEY
LOGAN COUNTY COURTHOUSE
301 EAST HARRISON AVE., ROOM 300
GUTHRIE, OKLAHOMA 73044
ATTORNEY FOR THE STATE

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA
THEODORE M. PEEPER
ASSISTANT ATTORNEY GENERAL
313 NORTHEAST 21ST STREET
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR APPELLEE

OPINION BY: KUEHN, J.

LUMPKIN, J.: CONCUR
LEWIS, V.P.J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR

RC