

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THOMAS SAMUEL HANKS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION
Case No. C-2015-514

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN 27 2016

SUMMARY OPINION DENYING CERTIORARI

MICHAEL S. RICHIE
CLERK

JOHNSON, JUDGE:

Petitioner Thomas Samuel Hanks entered a negotiated plea of guilty in the District Court of Canadian County, Case No. CM-2015-44, to Domestic Abuse (Counts 1 and 2), in violation of 21 O.S.Supp.2014, § 644(C) and Malicious Injury to Property (Count 3), in violation of 21 O.S.2011, § 1760(A)(1). The Honorable Jack D. McCurdy, II accepted Hanks' plea and sentenced him according to the plea agreement to three months in the county jail on Count 1, and one year suspended on each of Counts 2 and 3. Sentences on all counts were ordered to be served consecutively. Hanks was fined \$50.00 on each Count and ordered to pay numerous costs and fees. Hanks filed an application to withdraw guilty plea which was denied following a hearing on May 27, 2015.

Hanks appeals the denial of his motion to withdraw plea raising the following issues:

- (1) whether his guilty pleas were knowingly, voluntarily, and intelligently entered;

- (2) whether he was denied the effective assistance of counsel; and
- (3) whether the trial court abused its discretion by assessing incarceration costs against him in violation of Oklahoma law.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

1.

Hanks argues that the record does not support the district court's conclusion at hearing on the motion to withdraw that his mental illness did not render him incompetent to enter his plea. The record is replete with evidence that Hanks understood the nature and consequences of his guilty plea at the time that he entered the plea and that the plea was knowingly and voluntarily entered. The district court did not abuse its discretion in denying Hanks' motion to withdraw plea. *Fields v. State*, 1996 OK CR 35, ¶ 38, 923 P.2d 624, 631-32.

2.

We reject Hanks' claim that defense counsel rendered ineffective assistance of counsel during the plea process. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Head v. State*, 2006 OK CR 44, ¶ 23, 146 P.3d 1141, 1148.

3.

The Judgment and Sentence shows that the district court assessed numerous fees and costs including \$1,142.00 to the County Sheriff and \$108.00 in DA Inmate Jail Fees. Hanks complains on appeal that because of

his diagnosed mental illness, these costs were assessed in violation of 22 O.S.2011, § 979a(A). Section 979a(A) provides that, “[t]he court shall order the defendant to reimburse all actual costs of incarceration, upon conviction or upon entry of a deferred judgment and sentence unless the defendant is a mentally ill person as defined by Section 1-103 of Title 43A of the Oklahoma Statutes.” Under the circumstances of this case, in which Hanks reported having been diagnosed as bipolar, he was entitled to a determination of whether he is a mentally ill person as defined by 43A O.S.2011, § 1-103. If so, he is exempt from the imposition of jail incarceration costs. The case is remanded to the District Court of Canadian County to make such a determination.

DECISION

The Petition for a Writ of Certiorari is **DENIED**. The case is **REMANDED** to the District Court of Canadian County for a determination under 22 O.S.2011, § 979a(A) of whether Hanks is a mentally ill person as defined by Section 43A O.S. 1-103 of Title 43A of the Oklahoma Statutes. The Judgment and Sentence of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CANADIAN COUNTY
THE HONORABLE JACK D. MCCURDY II, SPECIAL JUDGE**

**APPEARANCES IN THE
DISTRICT COURT**

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ATTORNEY FOR STATE

OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur in Results
LUMPKIN, V.P.J.: Concur in Results
LEWIS, J.: Concur
HUDSON, J.: Concur

RA

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