

September 8, 2006, the case came on for sentencing and the trial court then sentenced Petitioner to four concurrent life sentences. Petitioner now asks this Court to reverse the trial court's denial of his Motion to Withdraw Plea.

With respect to proposition three of the Petition for Writ of Certiorari, we find Petitioner was denied the right to counsel at the hearing on his motion to withdraw plea held on July 21, 2006. During that hearing, Petitioner spoke directly with the trial judge about conversations that took place during the plea hearing [no court reporter was present at that hearing] and his ineffective assistance of counsel claim.

At the time he presented these claims to the trial court, Petitioner had no legal advocate representing his interests. His court-appointed counsel was not present and the only "advocate" for the defendant was a colleague and apparent law firm partner of defense counsel, who did not advocate for Petitioner, but instead made one unhelpful statement regarding DNA results.

In *Randall v. State*, 1993 OK CR 47, ¶7, 861 P.2d 314, 315-316, this Court found the 6th Amendment right to assistance of counsel applies to every "critical stage" of a criminal proceeding and that "a hearing on an application to withdraw guilty plea is a 'critical stage' which invokes a defendant's right to counsel." Also, in *Carey v. State*, 1995 OK CR 55, 902 P.2d 1116, this Court found an actual conflict of interest existed between a defendant and his counsel when the defendant filed a *pro se* motion to withdraw guilty plea based upon his counsel's alleged coercion. The Court reasoned that "[d]uring the evidentiary

hearing, Petitioner had no attorney taking part in promoting his interests which were in actual conflict with the interests of (his attorney).” *Id.* at ¶10.

It is the policy of this Court that prior to granting Certiorari the State should be afforded an opportunity to respond to the Petition. However, a review of the transcript of the July 21, 2006, hearing on the Motion to Withdraw Plea reveals no attempt was made by the trial court to inquire if the Petitioner desired representation by counsel or to address the potential conflict of counsel based on the allegation of ineffective assistance of counsel.

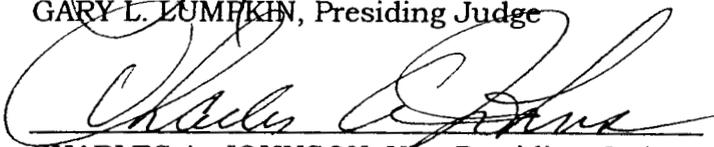
In accordance with *Randall* and *Carey*, this matter is hereby **REMANDED** to the district court for a new hearing on Petitioner’s Motion to Withdraw Plea filed on July 6, 2006. At the hearing, Petitioner shall be entitled to independent counsel to represent him regarding the claims raised in that motion against his counsel. Petitioner shall secure new counsel within thirty (30) days of the date of this Order to represent him regarding his motion to withdraw plea, either by retaining said counsel or applying for a court appointed attorney. Within thirty (30) days from the date Petitioner obtains new counsel, the trial court shall conduct a new hearing on Petitioner’s July 6, 2006, *pro se* motion and resolve the questions raised therein. The trial court shall ensure a transcript and record of the evidentiary hearing is submitted to this Court and Petitioner within twenty (20) days of the hearing. Within sixty (60) days from the trial court’s ruling, Petitioner may file a supplemental brief under case number C-06-1079, if necessary, to challenge the trial court’s

ruling, in accordance with our rules. However, pursuant to Rule 4.3 (C)(5), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2007), only issues raised in the Motion to Withdraw Plea and ruled on by the District Court may be presented in a Petition for Certiorari to this Court.

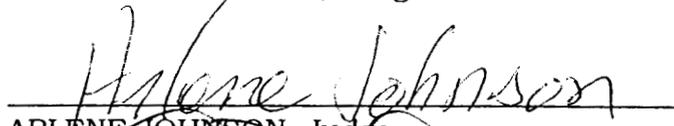
IT IS SO ORDERED.

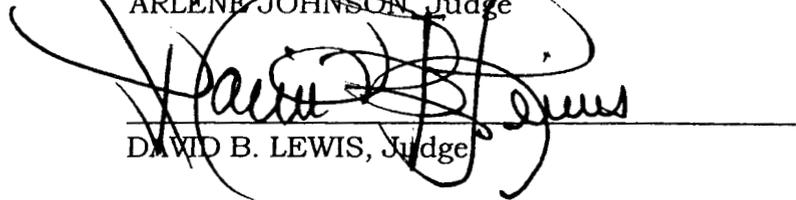
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this ^{26th} day of June, 2007.


GARY L. LUMPKIN, Presiding Judge


CHARLES A. JOHNSON, Vice Presiding Judge


CHARLES S. CHAPEL, Judge


ARLENE JOHNSON, Judge


DAVID B. LEWIS, Judge

ATTEST:


Clerk

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