

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIELLE MARIE HARRIS, )

Petitioner, )

vs. )

THE STATE OF OKLAHOMA, )

Respondent. )

IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

NOT FOR PUBLICATION

FILED

MAC-2017-458

AUG - 9 2018

JOHN D. HADDEN

CLERK

SUMMARY OPINION REMANDING FOR FURTHER PROCEEDINGS

**KUEHN, JUDGE:**

On March 23, 2017, Petitioner entered a negotiated plea of guilty in Oklahoma County District Court Case No. CF-2017-260 to Count 1: Possession of Methamphetamine (63 O.S.2011, § 2-402) and Count 2: Possession of Drug Paraphernalia (63 O.S.2011, § 2-405). Petitioner was sentenced, pursuant to the agreement, to five years on Count 1, and one year on Count 2, with both terms suspended and to be served concurrently with each other. On March 28, 2017, Petitioner sent a *pro se* letter to the court, asking to withdraw her plea. Petitioner's counsel followed up with a formal motion to withdraw guilty plea on March 29. A second motion to withdraw was filed by different appointed counsel on March 30. On April 21, 2017, the Honorable Larry D. Shaw, Special

Judge, denied Petitioner's request to withdraw her pleas. She timely perfected an appeal to this Court; at this Court's direction, the State filed a response on April 13, 2018.

Petitioner raises one proposition of error in support of her petition:

PROPOSITION. THE TRIAL COURT'S RULING EFFECTIVELY DENIED MS. HARRIS HER RIGHT TO AN EVIDENTIARY HEARING ON HER APPLICATION TO WITHDRAW HER PLEA AND THE CASE SHOULD BE REMANDED FOR A PROPER HEARING.

After review of the briefs and the record on appeal, we grant *certiorari* and remand for further proceedings. A defendant seeking to withdraw her guilty plea must, within ten days of sentencing, file a motion "setting forth in detail the grounds for the withdrawal of the plea and requesting an evidentiary hearing in the trial court." Rule 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S., Ch. 18, App. (2018). The district court shall hold an evidentiary hearing on the matter. Rule 4.2(B), *id.* Petitioner initiated the plea-withdrawal process by sending a *pro se* letter to the court, explaining why she wished to withdraw her pleas. Her attorneys subsequently filed two motions to withdraw plea, but neither specified the grounds for the request. Although a hearing was scheduled, the district court abruptly terminated it for Petitioner's failure to specify the basis of her challenge in the motions to withdraw. The court concluded that it would not be fair to

hold a hearing without giving the State (and the court itself) advance notice of the specifics of Petitioner's complaint. While the district court's concerns are well-founded, we believe Petitioner's *pro se* request set forth, in sufficient detail, the grounds for withdrawing her plea as required by Rule 4.2(A). In any event, the termination of the hearing was not an appropriate remedy, since a hearing on the motion was not discretionary.<sup>1</sup> *Anderson v. State*, 2018 OK CR 13, ¶¶ 3-4, \_\_ P.3d \_\_. Whether to grant a motion to withdraw plea is within the trial court's discretion. *Allen v. State*, 1991 OK CR 35, ¶ 15, 821 P.2d 371, 375. But whether to hold a hearing on the matter is not.

### **DECISION**

Certiorari is **GRANTED**. The District Court's denial of Petitioner's Motion to Withdraw Plea is **VACATED**, and the case is **REMANDED FOR FURTHER PROCEEDINGS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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<sup>1</sup> If the State had not received notice of Petitioner's *pro se* complaint, a continuance would have been appropriate.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE LARRY D. SHAW, SPECIAL JUDGE

**ATTORNEYS AT HEARING**  
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**OPINION BY KUEHN, J.**

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

## **HUDSON, J., DISSENTING**

Today's decision lives up to the promise of *Anderson v. State*, 2018 OK CR 13, \_\_P.3d\_\_, that an evidentiary hearing must be held for any and all applications to withdraw a guilty plea, no matter how incoherent or groundless. I continue to dissent to this approach for the reasons previously articulated in my dissent in *Anderson*. Happily, the majority confirms that the decision whether to grant or deny an application to withdraw a plea remains within the district courts' discretion. However, if we continue on this path, who's to say even this well-established rule can survive?

Today's decision, which faithfully applies *Anderson*, shows that we have strayed from anything resembling a rules-based regime in dealing with these applications. The majority does little more here than require an evidentiary hearing in order that Petitioner may discover the grounds for challenging her plea. This approach should be no surprise after *Anderson* which itself required an evidentiary hearing for a defendant who did not request one and who alleged without detail in the written application to withdraw simply that "[h]e did not understand the nature and consequences of his plea[.]" *Anderson*, 2018 OK CR 13, ¶¶ 1, 8 (Hudson, J.,

dissenting). In the present case, we remand for an evidentiary hearing where the petitioner submitted a disjointed letter to the magistrate seeking to withdraw her plea that was followed up by two formal motions to withdraw, each filed by counsel, which provided no detail whatsoever for this request. This despite the requirement in Rule 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), that a defendant “set[ ] forth in detail the grounds for the withdrawal of the plea and request[ ] an evidentiary hearing in the trial court.”

Here, the magistrate quite understandably dismissed the application and there was no abuse of discretion. If the defendant (or counsel) cannot set forth with detail a legally cognizable reason in the written application to withdraw plea, why should the lower court be required to hold a hearing on the request to withdraw plea? By stripping the district courts of discretion to make even the most basic procedural decisions concerning these applications—like whether the petitioner’s ground for relief is sufficiently specific to state a claim—the majority suggests that guilty pleas are something merely to be tolerated but rarely trusted. Such a sentiment represents a seismic shift in our approach to applications to

withdraw guilty pleas where “[t]he only concern is whether the plea was entered knowingly and voluntarily.” *Fields v. State*, 1996 OK CR 35, ¶ 38, 923 P.2d 624, 631. See *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (1970) (the standard for determining the validity of guilty pleas “was and remains whether the plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant.”). I oppose the majority’s approach to these cases and therefore dissent.