

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

HIPOLITO JOHN HERRERA,)
)
 Petitioner,)
 vs.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

No. C-2018-1184

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 14 2019

JOHN D. HADDEN
CLERK

SUMMARY OPINION GRANTING CERTIORARI

KUEHN, VICE PRESIDING JUDGE:

Hipolito John Herrera pled guilty to Conjoint Robbery in violation of 21 O.S.2011, § 800, in the District Court of Custer County, Case No. CF-2017-353. After a sentencing hearing, the Honorable Doug Haught sentenced Petitioner to twenty (20) years imprisonment, all but the first 10 (ten) suspended. The trial court also ordered a total of \$659.83 in restitution, payable to the victim and the bail bondsman. Petitioner timely filed an Application to Withdraw Plea of Guilty, which was denied after a November 19, 2018 hearing. Petitioner timely filed this Petition for Writ of Certiorari.¹

¹ This Court directed a response from the State. As is permitted under Rule 4.3(E), the District Attorney's Office of Custer County tendered for filing a response on behalf of the State, which was filed June 12, 2019. Rule 4.3(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). The Attorney

Petitioner raises three propositions of error in support of his petition:

- I. Mr. Herrera's plea was not entered freely, knowingly and intelligently.
- II. The trial court failed to require proof of Jiffy Trip and the bail bondsman's actual losses to support a restitution order, therefore this court must vacate the judgment and sentence or remand the matter to the district court for a proper hearing on restitution.
- III. The bail bondsman is not a crime victim as intended by the Oklahoma statutes related to restitution, therefore the court must vacate the restitution order.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence require relief.

Petitioner claims in Proposition I that his plea was not knowing and voluntary. The State concedes this issue. The record shows that Petitioner was misadvised by plea counsel regarding his probable maximum sentence, and that he would not have entered his plea but for that advice. His plea was not knowingly and voluntarily entered, and the trial court abused its discretion in denying the motion to withdraw plea. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142. This proposition is granted.

General later also filed a response. This Court reviewed both responses filed on behalf of the State in reaching its conclusion.

Given our resolution of Proposition I, Propositions II and III are moot.

DECISION

The Custer County District Court's denial of Petitioner's Motion to Withdraw Guilty Plea is **REVERSED**, and the case remanded for further proceedings. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY
THE HONORABLE F. DOUG HAUGHT, DISTRICT JUDGE

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OPINION BY KUEHN, V.P.J.

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