

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

MICHELLE EMMA HILL,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

No. C-2006-286

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 07 2006

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION
GRANTING WRIT OF CERTIORARI

A. JOHNSON, J.:

Michelle Emma Hill, Petitioner, entered a negotiated plea of nolo contendere to a charge of Incitement to Riot in violation of 21 O.S.1991, § 1320.2, in the District Court of Pottawatomie County, Case No. CF-2000-329. The plea agreement provided that Hill would undergo 120 days of community supervision, perform 100 hours of community service and, if successful, receive a three year deferred sentence. Hill failed to appear at her scheduled sentencing hearing and a bench warrant was issued for her arrest. Sentence was imposed five years later on February 1, 2006. The court sentenced Hill to two years imprisonment and a \$250.00 fine, plus costs and fees. She filed a motion to withdraw her plea out of time and the district court granted her a hearing. At the hearing the district court denied her motion to withdraw plea and she appeals that ruling. She prays this Court issue a Writ of Certiorari and either modify her sentence to a three year deferred as provided in her original plea

agreement or allow her to withdraw her plea altogether and proceed to trial.

In her sole proposition, Hill contends the district court abused its discretion when it denied her motion to withdraw plea. She argues the court was required to give her the opportunity to withdraw her plea once the court decided to reject the terms of her original plea agreement. See *King v. State*, 1976 OK CR 103, ¶ 2, 553 P.2d 529, 535-36;¹ see also *Gravitt v. State*, 1983 OK CR 83, ¶ 2, 665 P.2d 831, 832.

The State agrees that *King* is controlling and that it was error not to give Hill the opportunity to withdraw her plea once the trial court

¹ *King* provides in pertinent part in its "PROCEDURE FOR TRIAL COURT'S ACCEPTANCE OF DEFENDANT'S PLEA OF GUILTY":

B. The court shall next inquire as to whether or not the tendered plea of guilty is the result of a plea agreement.

2. If the court determines from said appearing parties that the tendered plea of guilty is the result of a plea agreement and determines from the defendant that there is a factual basis for the plea of guilty, the trial court shall then require the full disclosure of the plea agreement and the trial court shall then proceed as follows:

a. Inform the defendant that the trial court concurs in the plea agreement; or,

b. Inform the defendant the trial court concurs in the plea agreement upon the condition that the presentence report, unless affirmatively waived by the defendant, and other relevant evidence are consistent with the representations made to the court at the plea hearing. However, if after receipt of the presentence report and other relevant evidence the trial court can no longer concur in the plea agreement the trial court must then afford the defendant the opportunity to reaffirm or withdraw his plea; or,

c. Inform the defendant that he rejects or declines to concur in the agreement and that if the defendant persists in the tendered plea a sentence less favorable than the one contemplated by the plea agreement may be imposed. Whereafter the trial court must then afford the defendant the opportunity to affirm or withdraw the tendered plea.

refused to honor the original plea agreement. We agree and find that Hill should be allowed to withdraw her plea and proceed to trial.

DECISION

The petition for Writ of Certiorari is **GRANTED**. This case is **REMANDED** to the district court with instructions to allow Hill to withdraw her plea and proceed to trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF POTTAWATOMIE COUNTY
THE HONORABLE DOUGLAS L. COMBS, DISTRICT JUDGE

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OPINION BY: A. JOHNSON, J.

CHAPEL, P.J.: Concur

LUMPKIN, V.P.J.: Concur in Results

C. JOHNSON, J.: Concur

LEWIS, J.: Concur

RB