

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JIMMY WAYNE HOLSTINE,)
) NOT FOR PUBLICATION
 Petitioner,)
)
 v.) Case No. C-2012-699
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 21 2013

SUMMARY OPINION
GRANTING CERTIORARI

MICHAEL S. RICHIE
CLERK

C. JOHNSON, JUDGE:

Petitioner, Jimmy Wayne Holstine, was charged in Atoka County District Court with Possession of a Controlled Dangerous Substance in Case No. CF-2012-12. Holstine entered a plea of no contest to the charge on February 8, 2012, and sentencing was deferred for five years. On April 17, 2012, the State filed an Application to Accelerate Deferred Judgment. An Amended Application to Accelerate Deferred Judgment was filed on May 24, 2012. Holstine's sentence was accelerated to ten years imprisonment on June 12, 2012. Holstine subsequently filed a Motion to Withdraw his no contest plea. At the conclusion of a hearing on this motion, his request was denied. It is from this ruling that Holstine appeals to this Court.

Holstine raises the following propositions of error:

1. Mr. Holstine should be allowed to withdraw his plea of guilty because the plea was not knowingly and intelligently entered into by Petitioner; instead it was made with inadvertence and by mistake.
2. Mr. Holstine received ineffective assistance of counsel during his district court proceedings.

3. A new hearing on the motion to withdraw plea is required because defense counsel at this critical stage of the proceeding utterly abandoned her client's cause, forcing Mr. Holstine to proceed without the benefit of counsel.
4. The sentence imposed after Mr. Holstine entered a plea of no contest is excessive and must be modified.

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and the briefs of the parties, we remand this case to the district court for a proper hearing on the motion to withdraw.¹ In Proposition III, Holstine alleges that although his attorney was present at the hearing on the motion to withdraw, her representation of him at this hearing was so inadequate that he was effectively denied his constitutional right to be represented by counsel at this critical stage of the criminal prosecution. The transcript of the hearing on the motion to withdraw contains two and a half pages of text. It reflects that defense counsel did nothing more than remind the court that she had tried to withdraw from the case earlier and then advise the court that the defense was standing on its motion. When Holstine tried to explain his position, the judge admonished him not to speak and did not allow him to speak further. The hearing was then concluded without any argument or presentation of witnesses from the defense. While defense counsel may have stated Holstine's position at the hearing on the motion to withdraw by standing on the motion, she certainly did not advocate the same. Although Holstine was not wholly without counsel, he was, arguably, constructively denied counsel as he was effectively without

¹ Holstine raises four propositions of error in his brief. However, because the error raised in Proposition III requires relief, only that proposition will be addressed in this opinion.

the assistance of counsel at the hearing on the motion to withdraw. *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 2047, 80 L.Ed.2d 657 (1984); *Young v. State*, 1994 OK CR 84, ¶ 9, 902 P.2d 1089, 1090-91. We find that this error may be adequately remedied by remanding the case to the district court for a proper hearing on Holstine's Motion to Withdraw Guilty Plea.

DECISION

The Petition for Writ of Certiorari is **GRANTED**, and the cause **REMANDED** to the district court for a proper hearing on the Motion to Withdraw Guilty Plea. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF ATOKA COUNTY THE HONORABLE RICHARD BRANAM, DISTRICT JUDGE

APPEARANCES AT PLEA HEARING

RHONDA TELFORD NAIDU
5909 NW EXPRESSWAY, #A-200
OKLAHOMA CITY, OK 73132
ATTORNEY FOR DEFENDANT

GREG JENKINS
ASSISTANT DISTRICT ATTORNEY
202 EAST COURT STREET
ATOKA, OK 74525
ATTORNEY FOR THE STATE

OPINION BY C. JOHNSON, J.
LEWIS, P.J.: CONCUR
SMITH, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULT
A. JOHNSON, J.: CONCUR

APPEARANCES ON APPEAL

KATRINA CONRAD-LEGLER
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA
KEELEY L. MILLER
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st ST.
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR THE STATE