

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

LEON LEE HOOKS, )  
 )  
 Petitioner, ) NOT FOR PUBLICATION  
 )  
 v. ) Case No. C-2009-900  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUN - 9 2010

**SUMMARY OPINION GRANTING CERTIORARI**

MICHAEL S. RICHIE  
CLERK

**A. JOHNSON, VICE PRESIDING JUDGE:**

Petitioner Leon Lee Hooks entered a negotiated plea of guilty in the District Court of Muskogee County, Case No. CF-2009-463, to First Degree Rape, After Former Conviction of a Felony in violation of 21 O.S.Supp.2008, § 1114. The Honorable Mike Norman accepted Hooks' plea and sentenced him to thirty years imprisonment, suspending all but the first ten years, and a \$100.00 fine. Hooks filed a timely *pro se* motion to withdraw his guilty plea. The district court held the prescribed hearing and denied his motion. Hooks appeals the district court's order and asks this Court to issue a Writ of Certiorari remanding this matter to the District Court with either instructions to permit him to withdraw his guilty plea or for a complete evidentiary hearing on the merits of his motion with the assistance of effective, conflict free counsel.

This case raises the single issue of whether Hooks received effective, conflict-free, assistance of counsel during the hearing on his motion to withdraw plea.

We have held that a defendant's right to effective assistance of counsel is violated where an actual conflict of interest exists between the defendant and counsel at a hearing on the defendant's motion to withdraw plea. *See Carey v. State*, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118. Such a conflict existed here. Hooks' complaints in his motion to withdraw his guilty plea focused primarily on counsel's ineffectiveness prior to and at the plea hearing. Thus Hooks' interests at the evidentiary hearing were to testify against his lawyer to establish that his guilty plea was entered involuntarily based on counsel's deficient performance; issues which were not addressed during the hearing. Hooks' attorney stood virtually mute throughout the entire proceeding because the attorney was faced with the dilemma of either trying to prove his client's case that he was ineffective or disputing his claim. Given the claims raised by Hooks, the district court should have given Hooks the option of proceeding with conflict-free counsel rather than the options of proceeding *pro se* or with conflicted counsel. This error requires a new evidentiary hearing in accordance with Hooks' constitutional right to effective assistance of counsel. The case is remanded for a new hearing on Hooks' application to withdraw plea.

**DECISION**

The Petition for a Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the district court for a hearing on the Application to Withdraw Plea consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY  
THE HONORABLE MIKE NORMAN, DISTRICT JUDGE

**APPEARANCES IN DISTRICT COURT**

LARRY VICKERS  
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MUSKOGEE, OK 74401  
ATTORNEY FOR DEFENDANT

**APPEARANCES ON APPEAL**

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FARLEY WARD  
ASSISTANT DISTRICT ATTORNEY  
MUSKOGEE COUNTY COURTHOUSE  
MUSKOGEE, OK 74401  
ATTORNEY FOR STATE

**OPINION BY: A. JOHNSON, V.P.J.**  
**C. JOHNSON, P.J.: Concur**  
**LUMPKIN, J.: Concur in Results**  
**LEWIS, J.: Concur**