

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLES BERT JONES, JR.,)

Petitioner,)

v.)

THE STATE OF OKLAHOMA,)

Respondent.)

NOT FOR PUBLICATION

Case No. C-2008-273

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 10 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION GRANTING CERTIORARI

A. JOHNSON, JUDGE:

Petitioner Charles Bert Jones, Jr. entered a blind plea of guilty in the District Court of Oklahoma County, Case No. CF-2005-5212, to First Degree Felony Murder (Count 1), in violation of 21 O.S.2001, § 701.7(B), Assault and Battery with a Dangerous Weapon (Count 2), in violation of 21 O.S.2001, § 645, and Conspiracy to Commit a Felony (Count 4), in violation of 21 O.S.2001, § 421.¹ The Honorable Tammy Bass-LeSure, District Judge, accepted Jones's plea and sentenced him to life imprisonment on Counts 1 and 4, and ten years imprisonment on Count 2, with the life sentences to be served concurrently with each other, but consecutive to the sentence in Count 2 and consecutive to Count 3 in CF-2000-6350.² A timely motion to withdraw plea was filed by Jones and after the prescribed hearing, the district court denied the motion.

¹ Count 3, Attempted Robbery with a Firearm, was dismissed because it merged into Count 1.

² At the hearing below, there was much discussion about the sentence the district court imposed and if the Judgment and Sentence reflected the sentence the court intended to impose. The record indicates that the court intended to run the sentence imposed in this case consecutive to Count 2, rather than Count 3, in CF-2000-6350. A corrected Judgment and Sentence is not in the record before this Court.

Jones appeals the district court's order and asks this Court to allow him to withdraw his plea and proceed to trial on the merits.

This case raises the single issue of whether Jones's plea was knowingly and voluntarily entered. We grant certiorari and remand this matter to the district court to allow Jones to withdraw his plea and proceed to trial. We further find this case should be reassigned to another district judge.

The evidence presented below was sufficient to support a finding that Jones entered his plea based upon his attorney's representation that the attorney had spoken to the trial judge and that the judge had agreed to sentence Jones to a more favorable sentence than the trial judge imposed. On the record before us, we find the trial court abused its discretion in denying Jones's motion to withdraw plea. *See Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. This matter is **REMANDED** to the district court with instructions to allow Jones to withdraw his plea of guilty and proceed to trial after reassignment to a different district judge. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE TAMMY BASS-LESURE, DISTRICT JUDGE

APPEARANCES IN DISTRICT COURT

TIM WILSON
FAUSTINE CURRY
ASSISTANT PUBLIC DEFENDERS
611 COUNTY OFFICE BUILDING
320 ROBERT S. KERR
OKLAHOMA CITY, OK 73102

RICHARD ANDERSON
ATTORNEY AT LAW
1021 N.W. 16TH ST.
OKLAHOMA CITY, OK 73106
ATTORNEYS FOR DEFENDANT

SANDY ELLIOTT
ASSISTANT DISTRICT ATTORNEY
505 COUNTY OFFICE BUILDING
320 ROBERT S. KERR
OKLAHOMA CITY, OK 73102
ATTORNEY FOR STATE

OPINION BY: A. JOHNSON, V.P.J.
C. JOHNSON, P.J.: Concur
LUMPKIN, J.: Dissent
CHAPEL, J.: Concur
LEWIS, J.: Concur

APPEARANCES ON APPEAL

MICHAEL D. MOREHEAD
OKLA. INDIGENT DEFENSE SYSTEM
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR PETITIONER

W. A. DREW EDMONDSON
OKLAHOMA ATTORNEY GENERAL
DONALD D. SELF
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

LUMPKIN, JUDGE: DISSENT

I fail to find a scintilla of credible evidence that would warrant a granting of Petitioner's request to withdraw his blind plea of guilty to the charges. Petitioner's iteration of what transpired prior to the plea is not supported by the testimony of either the trial judge or Petitioner's trial attorney.

This is another case of a blind plea being entered at a time a jury panel was waiting to try his case. As I have stated in *Pickens v. State*, 2007 OK CR 18, ¶ 1, 158 P.3d 482, 484 (Lumpkin, P.J.: Dissenting) "[t]he Court needs to remember a 'blind plea' is just that, a plea of guilty without any guarantee as to what the sentence will be." It appears that what Petitioner hoped would happen did not happen but the record does not support any conclusion but that he was told what the range of punishment was and that it would be entirely up to the judge what the sentence would be if a blind plea was entered.

The Petitioner had already been sentenced to a 40-year sentence in another Oklahoma County case, CF-2000-6350, and he wanted a sentence that would run concurrently with that case. In other words, the Petitioner is very aware of the intricacies of the criminal justice system and it appears he is trying to work the system based on his bald assertions that are not supported by the record.

I would affirm the denial of the application to withdraw plea of guilty.