

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

DAVID WAYNE LAUGHLIN,)
)
 Petitioner,)
)
 v.)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

No. C-2004-903

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN 13 2005

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION GRANTING CERTIORARI
AND REMANDING FOR HEARING ON MOTION TO WITHDRAW

A. JOHNSON, JUDGE:

David Wayne Laughlin, Petitioner, entered a blind plea of guilty to one count of Sexual Abuse of a Child in the District Court of Oklahoma County, Case No. CF-2003-4252. The Honorable Ray Elliott accepted Laughlin's plea and sentenced Laughlin to fifty (50) years imprisonment. Laughlin filed a timely pro se application to withdraw his guilty plea. Following the prescribed hearing, the district court denied Laughlin's application. Laughlin now appeals the district court's order denying his motion to withdraw plea and asks this Court to issue a Writ of Certiorari and allow him to withdraw his guilty plea and proceed to trial.

Laughlin raises three propositions of error in support of his petition for writ of certiorari:

- I. Mr. Laughlin was denied his right to counsel at his hearing on the motion to withdraw his plea;
- II. Petitioner's plea of no contest was entered as a result of coercion and undue influence; therefore, the plea was not voluntary; and

III. Although a "blind plea" was entered, Mr. Laughlin appears to have been denied the benefit of a bargain when he was subjected to harsher punishment than was recommended by the District Attorney.

We find the error in Proposition I requires remand. This relief renders the other propositions moot and we do not consider them.

Laughlin contends that his Sixth Amendment right to effective assistance of counsel at the evidentiary hearing was violated because of an actual conflict of interest between his attorney and himself. As the hearing on the application to withdraw began, counsel asked the district court to allow him to withdraw as counsel, stating that there was a conflict of interest and that he would likely be called as a witness at the motion hearing.¹ Counsel told the district court there was an issue regarding undue influence based on his representation of Laughlin at the plea. Questioning of Laughlin established that part of the basis for his application to withdraw his plea was a claim that he was unduly influenced or coerced by counsel to forego the right to a jury trial and enter a guilty plea.

We have held a defendant's right to effective assistance of counsel is violated where an actual conflict of interest exists between the defendant and counsel concerning a motion to withdraw plea. *Carey v. State*, 1995 OK CR 55, 902 P.2d 1116, 1117-18. Such a conflict existed here. Counsel correctly moved to withdraw from representation and the district court should have granted the motion and appointed new counsel for the hearing on Laughlin's

¹ Counsel explained, "I believe I am in a conflict of interest. I believe I would be called as a witness in this application. . . My first witness would be myself if I were forced to represent him. I do not believe that's appropriate."

application to withdraw plea. This error requires a new plea hearing in accordance with Laughlin's constitutional right to effective assistance of counsel. The case is remanded for a new hearing on the application to withdraw plea.

DECISION

The Petition for Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the trial 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. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

APPEARANCES IN THE DISTRICT COURT

ROBERT SISSON
ATTORNEY AT LAW
1701 DRAKESTONE AVE.
OKLAHOMA CITY, OK
ATTORNEY FOR LAUGHLIN

SUANNE CARLSON
DEREKCHANCE
ASSISTANT DISTRICT ATTORNEYS
320 ROBERT S. KERR, RM. 505
OKLAHOMA CITY, OK 73102
ATTORNEY FOR THE STATE

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

RB

APPEARANCES ON APPEAL

LISBETH MCCARTY
OKLAHOMA INDIGENT
DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR LAUGHLIN