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FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

JAN 17 2012

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

MICHAEL S. RICHIE  
CLERK

MYRON EMANUEL LOUIE, )  
 )  
 Petitioner, )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

No. C-2011-546

RECEIVED

JAN 17 2012

FROM: COURT OF  
CRIMINAL APPEALS

**ORDER REMANDING FOR APPOINTMENT OF CONFLICT FREE COUNSEL**

Petitioner Myron Emanuel Louie was charged in the District Court of Pottawatomie County, Case No. CF-2009-414, with Child Abuse by Injury, After Former Conviction of Two or More Felonies (21 O.S.2001, § 843.5(A). On April 27, 2011, Petitioner's plea of guilty to the amended charge of Assault with a Dangerous Weapon, After Former Conviction of Two or More Felonies (21 O.S.2001, § 645) was accepted by the Honorable John G. Canavan, District Judge. On May 25, 2011, Petitioner appeared for sentencing. Before sentence was imposed he announced he wished to withdraw his guilty plea. The court went forward with sentencing, imposing ten (10) years in prison. On May 31, 2011, Petitioner filed a motion to withdraw guilty plea. At a hearing held on June 8, 2011, that motion was denied. It is that denial which is the subject of this appeal. Petitioner raises the following propositions of error in support of his appeal.

- I. Petitioner's trial attorney was operating under an actual conflict of interest which deprived Petitioner of effective assistance of counsel in violation of the Sixth and Fourteenth Amendments of the United States

Constitution and Article II, §§ 7, 20, of the Oklahoma Constitution.

- II. The trial court abused its discretion when it denied Petitioner's motion to withdraw his guilty plea.
- III. Petitioner was deprived of effective assistance of counsel.

In Proposition I, a criminal defendant is entitled to effective assistance of counsel at a hearing on a motion to withdraw a guilty plea. *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 116, 117; *Randall v. State*, 1993 OK CR 47, ¶ 7, 861 P.2d 314, 316; *Okl. Const.* art. II, § 20; *U.S. Const.* amend. VI. The right to effective assistance of counsel includes the correlative right to representation that is free from conflicts of interest. *Carey*, 1995 OK CR 55, ¶ 5, 902 P.2d at 117, citing *Wood v. Georgia*, 450 U.S. 261, 271, 101 S.Ct. 1097, 1103, 67 L.Ed.2d 220 (1981). Rule 1.7(b) Rules of Professional Conduct, 5 O.S.2001, Ch. 1, App. 3-A. To prevail on an ineffective assistance of counsel claim based on a conflict of interest, a defendant who raised no objection at trial or a hearing on a motion to withdraw a guilty plea need not show prejudice, but "must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." *Id.* citing *Cuyler v. Sullivan*, 446 U.S. 335, 349, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980).

Here, plea counsel filed the motion to withdraw alleging his own ineffectiveness. Counsel seemed to be under the impression that his obligation to Petitioner was met by filing the motion to withdraw. At the withdrawal hearing, counsel did not act as Petitioner's adversary, but he did not actively

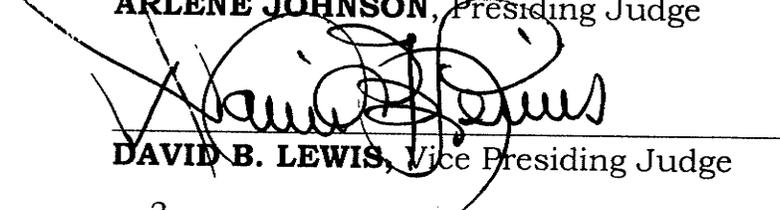
promote Petitioner's interests. As the record indicates an otherwise voluntary plea, we find the case should be remanded to the District Court for appointment of conflict free counsel. The remaining propositions of error are therefore moot.

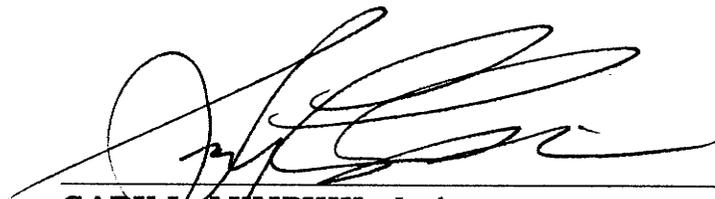
IT IS THE ORDER OF THE COURT that the case be remanded to the District Court for appointment of conflict free counsel. Counsel shall have ten (10) days from the date of appointment to file a new motion to withdraw guilty plea. The trial court shall hold a hearing on the motion within thirty (30) days of its filing. If the court grants the motion to withdraw, the judge shall provide this Court with a copy of the order granting the withdrawal which will serve as a final adjudication in this certiorari petition. If the trial court denies the motion to withdraw plea, the record, including transcripts of the hearing and the order denying the motion, shall be filed with this Court within twenty (20) days of that hearing. Within ten (10) days of the filing of the record, Petitioner shall file a supplemental Petition for Writ of Certiorari with this Court under the current case number.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 17<sup>th</sup> day  
of January, 2012.

  
ARLENE JOHNSON, Presiding Judge

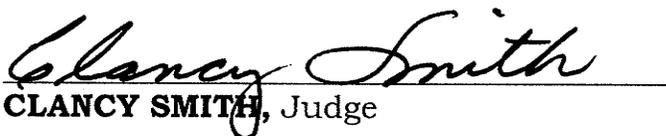
  
DAVID B. LEWIS, Vice Presiding Judge



**GARY L. LUMPKIN**, Judge



**CHARLES A. JOHNSON**, Judge



**CLANCY SMITH**, Judge

ATTEST:



Clerk