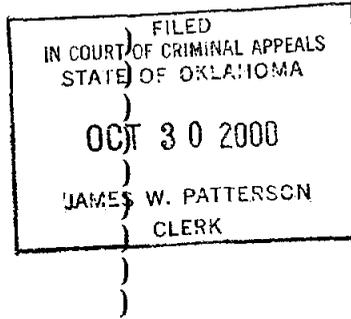


IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RAHMON L. MACON,
Appellant,

v.

THE STATE OF OKLAHOMA,
Appellee.



No. F-99-1302

ACCELERATED DOCKET ORDER

Pursuant to a plea agreement, Appellant entered a plea of guilty to Grand Larceny in the District Court of Payne County, Case No. CF-93-357. Appellant was given a five (5) year deferred sentence, with rules and conditions of probation. Subsequently, the State filed an Application to Accelerate Appellant's Deferred Sentence alleging Appellant had not complied with the rules of his probation. At the conclusion of a hearing on the Application, the District Court found Appellant had violated the terms and conditions of his deferred sentence and sentenced Appellant to five years imprisonment. Appellant appeals from that order of acceleration.

On appeal, Appellant raises three propositions of error:

1. The decision to impose the maximum sentence of five years was an abuse of discretion;
2. The trial court failed to advise Appellant of his right to seek to withdraw his plea of guilty; and
3. The failure of Appellant's trial counsel to secure a letter of recommendation from the Tulsa County District Attorney's Office regarding Appellant's assistance to that office constituted ineffective assistance of counsel.

Pursuant to Rule 11.3(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2000), this appeal was assigned to the Accelerated Docket of this Court. The propositions of error were presented in oral argument October 19, 2000, pursuant to Rule 11.2(F). At the conclusion of oral argument, this Court voted three (3) to one (1) to **REVERSE** and **REMAND** this matter to the

District Court with directions that Appellant be informed of and given the opportunity to withdraw his plea of guilty.

We find merit in Appellant's second proposition of error. In *Gonseth v. State*, 1994 OK CR 9, ¶ 12, 871 P.2d 51, 55, this Court noted that a defendant can appeal from a trial court's denial of a motion to withdraw a guilty plea, even though the court defers judgment and sentence. Moreover, a defendant is under no obligation to enter an appeal after the court's order is entered, because a defendant can appeal the propriety of the acceleration proceedings and also challenge the validity of his underlying plea, if no appeal was filed earlier. In the case at bar, there is no evidence Appellant was ever advised of his right to withdraw his plea of guilty, either at the time of his plea was entered or at the time his sentence was accelerated. That was error.

IT IS THEREFORE THE ORDER OF THIS COURT, by a vote of 3 - 1, that Case No. CF-98-712 is **REVERSED** and **REMANDED** to the District Court with directions that Appellant be informed of and given the opportunity to withdraw his plea of guilty

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 30th day of October, 2000.



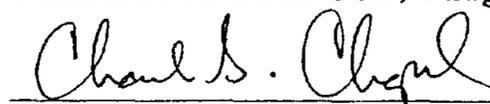
RETA M. STRUBHAR, Presiding Judge



GARY L. LUMPKIN, Vice Presiding Judge - Dissents

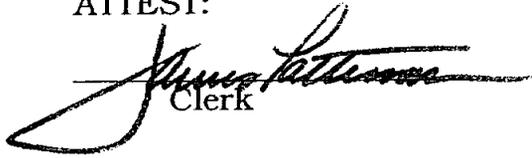


CHARLES A. JOHNSON, Judge



CHARLES S. CHAPEL, Judge

ATTEST:


Clerk