

FILED
IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA
 IN COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA
 CHARLES HACKNEY MCBRIDE,

SEP 19 2005

) Petitioner,
)
) MICHAEL S. RICHIE
) CLERK
) NOT FOR PUBLICATION
) -vs-) No. C-2005-120
)
)
) STATE OF OKLAHOMA,
)
)
) Respondent.)

OPINION GRANTING CERTIORARI AND
REMANDING CASE FOR A HEARING ON PETITIONER'S MOTION TO
WITHDRAW GUILTY PLEA

A. JOHNSON, JUDGE:

Charles Hackney McBride, Petitioner, entered a blind plea of guilty on January 22, 2004, to one count of Manufacturing a Controlled Dangerous Substance and one count of Unlawful Possession of Marijuana (a misdemeanor) in the District Court of Kingfisher County, Case No. CF-2003-64. The Honorable Susie Pritchett accepted McBride's plea. The district court delayed McBride's sentencing and placed him in the Regimented Inmate Discipline (RID) Program. On June 3, 2004, McBride returned to court following his successful completion of the RID program and the district court, by agreement of the parties, released him and set sentencing for January 20, 2005. On that date, the district court conducted McBride's sentencing hearing and, after hearing aggravating and mitigating evidence, sentenced McBride to life imprisonment and a \$50,000 fine for manufacturing and one year in the county jail for unlawful possession of marijuana. The district court ordered the

sentences to be served consecutively and suspended the \$50,000 fine. Eight days later, McBride filed a timely motion to withdraw plea and asked that the matter be set for a hearing. The State filed its response on February 1, 2005 and the district court entered a written order denying McBride's motion to withdraw plea on February 2, 2005. From the district court's order denying his motion, McBride asks this Court to issue a writ of certiorari and allow him to withdraw his plea and proceed to trial or remand this matter for a proper evidentiary hearing.

In Proposition II, McBride complains that he was denied his right to a hearing on his motion to withdraw plea. The record shows the district court denied McBride's motion without holding the mandatory hearing. See Rule 4.2, (B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2005)(stating "[t]he trial court shall hold an evidentiary hearing and rule on the application [to withdraw plea] within thirty (30) days from the date it was filed). Rule 4.2 creates "a preliminary step in the certiorari appeal procedures, which is necessary to make a record of the evidence relied on by the parties to support their arguments on the motion to withdraw guilty plea." See *Roberts v. Morgan, ex rel. Municipal Court of the City of Oklahoma City*, 1998 OK CR 31, ¶ 10, 965 P.2d 382, 384. Rule 4.2 (B) thus is mandatory unless waived.

McBride did not waive his right to the hearing and, in fact, requested the matter be set for hearing in his application to withdraw plea. He claimed in his motion that he did not waive his right to a preliminary hearing and that his sentence was excessive. Though it may seem that McBride would have little or

no further factual evidence or argument to develop for his claims, McBride is entitled to a hearing to make his record for review. Because the district court failed to hold the mandatory evidentiary hearing, we remand this case to the District Court of Kingfisher County for an evidentiary hearing on McBride's application to withdraw his guilty plea.¹

DECISION

The Petition for Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the district court for a hearing on the Application to Withdraw Plea pursuant to Rule 4.2. 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 KINGFISHER COUNTY
THE HONORABLE SUSIE PRITCHETT, ASSOCIATE DISTRICT JUDGE

APPEARANCES IN THE DISTRICT COURT

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APPEARANCES ON APPEAL

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¹Because this case must be remanded for a proper hearing on McBride's motion to withdraw plea, McBride's other propositions of error will not be considered.

OPINION BY: A. JOHNSON, J.

CHAPEL, P.J.: Concur

LUMPKIN, V.P.J.: Concur

C. JOHNSON, J.: Concur

RB