

MAR 25 2004

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

**MICHAEL S. RICHIE**  
CLERK

TODD WAYNE MCFARLAND,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
v.	)	Case No. C-2003-848
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Todd McFarland pled no contest to Count I: Sexual Battery in violation of 21 O.S.2001, § 1123 and Count II: Rape by Instrumentation in violation of 21 O.S.2001, § 1111 in Creek County District Court, Case No. CF-2001-552. After a hearing on March 24, 2003, the Honorable April Sellers White sentenced McFarland to five (5) years' imprisonment on Count I and twenty (20) years' imprisonment with all but the first ten (10) years' imprisonment suspended to be served concurrently. McFarland timely filed an Application to Withdraw his Plea on March 28, 2003, which was denied after a July 17, 2003 hearing. McFarland timely appealed to this Court on July 28, 2003.

McFarland raises the following propositions of error:

- I. The trial court wrongly advised the defendant that a deferred sentence was one of the sentencing options if he entered a blind plea believing a deferred sentence was an option. The plea was therefore not knowing and voluntary as required by the Due Process Clause of the United States Constitution, and the defendant should be allowed to withdraw his plea.
- II. The defendant was denied effective assistance of counsel when his attorney advised him a deferred sentence was

available, when it was not, and he entered a blind plea relying on this advice.

- III. The trial court failed to establish an adequate, factual basis for the plea

After thorough consideration of the entire appellate record, including the original record, transcripts, briefs and exhibits of the parties, we find that reversal is required because McFarland was denied the effective assistance of counsel. Specifically, we find in Proposition II that McFarland was denied the effective assistance of counsel when his attorneys induced him to plead “no contest” based upon an easily discernible and incorrect legal opinion.<sup>1</sup>

### **Decision**

Petitioner’s Writ of Certiorari is **GRANTED** and cause **REMANDED** to allow Mr. McFarland to Withdraw his Plea.

#### **ATTORNEYS AT TRIAL**

W. CREEKMORE WALLACE  
20 N. ELM  
SAPULPA, OKLAHOMA 74066  
ATTORNEY FOR DEFENDANT

CAROL ISKI  
ASSISTANT DISTRICT ATTORNEY  
CREEK COUNTY COURTHOUSE  
222 EAST DEWEY

SAPULPA, OKLAHOMA 74501  
ATTORNEY FOR THE STATE

#### **ATTORNEYS ON APPEAL**

GAIL L. WETTSTEIN  
3035 NW 63<sup>RD</sup> STREET  
SUITE 230 N  
OKLAHOMA CITY, OKLAHOMA 73116  
ATTORNEY FOR PETITIONER

W.A. DREW EDMONDSON  
ATTORNEY GENERAL OF OKLAHOMA  
PRESTON SAUL DRAPER  
ASSISTANT ATTORNEY GENERAL  
112 STATE CAPITOL BUILDING  
OKLAHOMA CITY, OKLAHOMA 73105  
ATTORNEYS FOR RESPONDENT

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<sup>1</sup> *Moore v. Bryant*, 348 F.3d 238 (7<sup>th</sup> Cir. 2003)(finding that an Illinois Appellate court acted unreasonably in rejecting an ineffective assistance of counsel claim where trial counsel induced defendant to plead guilty based upon misinformation regarding his sentence). McFarland pled no contest based upon his attorney’s mistaken opinion that he was eligible to receive a deferred sentence. The record indicates that McFarland would not have entered the no contest plea had he known he was ineligible for a deferred sentence

**OPINION BY: CHAPEL, J.**

JOHNSON, P.J.: DISSENT

LILE, V.P.J.: CONCUR

LUMPKIN, J.: DISSENT

STRUBHAR, J.: CONCUR IN RESULTS