

JUL 1 2003

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

CHRISTOPHER DWAYNE MCGEE,)
)
Petitioner,)
v.)
THE STATE OF OKLAHOMA,)
)
Respondent.)

NOT FOR PUBLICATION
Case No. C-2002-946

SUMMARY OPINION GRANTING PETITION FOR CERTIORARI

CHAPEL, JUDGE:

Christopher Dwayne McGee was charged in the District Court of Stephens County, Case No. CF-2001-20, with Distribution of Controlled Substance, under 63 O.S. § 2-401(A) (Count I); Conspiracy to Distribute CDS, under 63 O.S. § 2-408 (Count II); Distribution of Controlled Substance, under 63 O.S. § 2-401(A) (Count III); and Conspiracy to Distribute CDS, under 63 O.S. § 2-408 (Count IV).¹ A Supplemental Information charged McGee with three prior felony convictions.

On November 21, 2001, McGee pled guilty to all four counts, before the Honorable George W. Lindley. On January 7, 2002, McGee was sentenced to imprisonment for thirty (30) years and a fine of \$2,500 on each of the four

¹ The Information, in conjunction with the Record as a whole, indicates that Counts I and II were based upon a sale of crack cocaine on August 23, 2000, while Counts III and IV were based upon a sale of crack cocaine on September 19, 2000.

counts, with the imprisonment terms to be served concurrently. He now files a petition for certiorari, seeking to withdraw his guilty plea.²

McGee raises the following propositions of error in support of his petition:

- I. Mr. McGee was denied his right to the effective assistance of counsel because trial counsel offered no reasonable ground in support of Petitioner's motion to withdraw pleas of guilty.
- II. Mr. McGee should be allowed to withdraw his guilty plea because it was not knowingly and voluntarily entered.
- III. Mr. McGee's conviction for both conspiracy to distribute a controlled dangerous substance and distribution of that same amount of controlled dangerous substance violated the statutory prohibition against double punishment.

The crux of McGee's petition for certiorari is that he should be allowed to withdraw his guilty plea because he pled guilty after the State agreed to drop the "second page," and the trial court agreed that there would be "no enhancer" in the case. Yet the Record clearly reveals that McGee's ultimate conviction and sentence were based upon a finding that he had two or more prior felony convictions; and his sentence was enhanced accordingly.

On May 29, 2003, the State filed a notice with this Court confessing error in this regard. The State admits that McGee's guilty plea was based upon an agreement that the second page would be dropped, but that his ultimate sentence was enhanced based upon his prior convictions. The State suggests that the proper remedy is to remand the case to the district court, where McGee should be allowed to withdraw his guilty plea. This Court agrees.

² A more complete procedural history of the case, as well as a description of the circumstances surrounding McGee's plea, was outlined in this Court's order of April 29, 2003, directing the State

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that the current petition for certiorari should be granted.

Decision

The Petition for a Writ of Certiorari is **GRANTED**. The current case is **REMANDED** to the District Court, where McGee shall be allowed to **WITHDRAW HIS GUILTY PLEA** to the four counts to which he pled in this case.

ATTORNEYS AT TRIAL

DONALD J. GUTTERIDGE
UNITED FOUNDERS TOWER
5900 MOSTELLER DR., STE. 1100
OKLAHOMA CITY, OK 73112
ATTORNEY FOR DEFENDANT

JERRY HERBERGER
ASSISTANT DISTRICT ATTORNEY
STEPHENS COUNTY COURTHOUSE
101 S. 11TH STREET
DUNCAN, OKLAHOMA 73533
ATTORNEY FOR STATE

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
STRUBHAR, J.: CONCUR

ATTORNEYS ON APPEAL

KIMBERLY D. HEINZE
APPELLATE DEFENSE COUNSEL
P.O. BOX 926
NORMAN, OKLAHOMA 73070
ATTORNEY FOR PETITIONER

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
PATRICK T. CRAWLEY
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR RESPONDENT

to file a response to McGee's petition for certiorari. This history and background will not be repeated herein.