

DEC 11 2013

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

CHARLES D. NORTH,)	
)	
Petitioner,)	NOT FOR PUBLICATION
)	
v.)	Case No. C-2012-1154
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

SUMMARY OPINION GRANTING CERTIORARI

A. JOHNSON, JUDGE:

Petitioner Charles D. North pled guilty in the District Court of Muskogee County, Case No. CF-2010-1149, to one count of First Degree Manslaughter, After Former Conviction of a Felony (Count 1), in violation of 21 O.S.2001, § 711, one count of Failure to Carry Insurance/Security Verification Form (Count 2), in violation of 47 O.S.Supp.2009, § 7-602, and one count of Failure to Pay Taxes Due to State (Count 3), in violation of 47 O.S.Supp.2009, § 1151(A)(5).¹ The Honorable Thomas H. Alford, District Judge, accepted North's pleas and sentenced him to thirty years imprisonment with the last ten years suspended on Count 1, and six months imprisonment on each of Counts 2 and 3, with all sentences running concurrently.² Judge Alford also imposed costs plus a \$100

¹ North also entered a plea of guilty in Case No. CF-2011-559 to one count of perjury. The district court ordered North's sentence in Case No. CF-2011-559 to run concurrently with his sentence in this case. North does not challenge his perjury conviction and sentence in this appeal.

² Under 21 O.S.Supp.2011, § 13.1, North must serve 85% of the sentence imposed on Count 1 before becoming eligible for parole.

victim compensation assessment fee on Count 1, and a \$50 victim compensation assessment fee on each of Counts 2 and 3.

North filed a timely *Pro Se* Motion to Withdraw Plea of Guilty alleging that he received ineffective assistance of counsel and that his pleas were not knowingly and voluntarily entered. North appeared at the prescribed hearing without his appointed counsel and the district court denied his *pro se* motion. North then filed the current petition for certiorari, appealing the order denying his motion and asking to withdraw his pleas and proceed to trial. In the alternative, he asks this matter be remanded to the district court for the appointment of conflict-free counsel and a new hearing on his motion to withdraw pleas.

North raises five issues on appeal.³ North's second and third claims—that he was denied counsel at the hearing on his motion to withdraw pleas and that his sentences on Counts 2 and 3 are invalid—require brief discussion and relief.

³ North raises the following issues:

- (1) whether his plea on Count 1 was knowingly and voluntarily entered;
- (2) whether he was deprived of his right to counsel at the hearing on the motion to withdraw his pleas of guilty;
- (3) whether his sentences on Counts 2 and 3 must be modified because they exceed the statutory maximum allowed by statute, as well as impose unlawful fees;
- (4) whether he received effective assistance of counsel; and
- (5) whether cumulative error deprived him of a fair trial.

The parties agree that North was denied his right to counsel at the hearing on his motion to withdraw pleas.⁴ North entered his guilty pleas on July 16, 2012, and the district court imposed sentence on November 5, 2012. North was represented by appointed counsel at both of these proceedings.⁵ North filed a *pro se* motion to withdraw his previously entered guilty pleas on November 11, 2012. At the hearing on North's *pro se* motion, he appeared without appointed counsel. He reminded the court that he had been dissatisfied with his appointed counsel's representation throughout the proceedings and he stated his reasons supporting his request to withdraw his pleas. The prosecutor argued that North's complaints about his appointed counsel and his sentence did not affect the voluntariness of his pleas. The district court, after noting that North had made some "compelling" arguments with respect to mitigation, agreed with the State and denied North's motion.

The Sixth Amendment right to assistance of counsel applies to every critical stage of a criminal prosecution, including a hearing on an application to withdraw a guilty plea. *See Randall v. State*, 1993 OK CR 47, ¶¶ 3 & 7, 861 P.2d 314, 315 & 316 (holding a defendant is entitled to the assistance of counsel at the evidentiary hearing on a motion to withdraw guilty plea). North appeared *pro se* at the hearing and the district court neither informed him of his right to counsel nor obtained a waiver from North of his right to counsel. The record reflects no discussion by the district court concerning North's *pro se*

⁴ The Court directed the State to respond to North's brief and the State responded on November 15, 2013.

⁵ North was represented by Larry Vickers at both the plea and sentencing hearings.

status at this critical stage. North clearly had a right to counsel at the hearing on his motion.⁶

Presumably appointed counsel did not appear at this hearing because of North's allegations of ineffective assistance of counsel. In cases where the defendant asserts ineffective assistance as the reason that a guilty plea is invalid, the district court is obligated to appoint conflict-free counsel to represent the defendant unless counsel is knowingly waived on the record. See *Carey v. State*, 1995 OK CR 55, ¶¶ 9-10, 902 P.2d 1116, 1118 (holding petitioner's Sixth Amendment right to conflict-free counsel had been denied at the plea withdrawal hearing as a result of the court's failure to appoint conflict-free counsel to represent the defendant). Because the district court failed to assess the status of North's representation, we find North was denied his right to counsel. The State concedes, and we agree, that the error is not harmless in this case because of North's allegations. See *Randall*, 1993 OK CR 47, ¶ 7, 861 P.3d at 316 (harmless error doctrine applies only where: (1) the defendant neither alleges that he is innocent nor that his plea was involuntary; and (2) it is clear that the defendant is not entitled to withdraw his plea.) This Court is not making any finding on the validity of North's attempt to withdraw his pleas. We simply find that he was entitled to effective and conflict-free representation on his motion.

⁶ Not only is there no waiver of North's right to counsel in the record, there is also nothing reflecting North was advised about the consequences of proceeding *pro se* in order for him to make an informed decision about proceeding without counsel.

The State also concedes in its answer brief that the sentences as well as the victim compensation assessment imposed on Counts 2 and 3 exceed statutory authority. See 47 O.S.Supp.2009, § 7-606, 47 O.S.Supp.2009, § 1151, and 21 O.S.Supp.2009, § 142.18. The sentences and victim compensation assessment on Counts 2 and 3 must be vacated pending the outcome of North's hearing on his motion to withdraw pleas. If North is allowed to withdraw his pleas, the issue of the appropriate sentence for counts 2 and 3 will be decided by the appropriate sentencer. If North is not allowed to withdraw his pleas, the district court must resentence North on these counts within the range of punishment provided by law.

On remand, the district court must appoint new counsel for North and direct counsel to consult with North regarding the filing of a new motion to withdraw setting forth all of the specific grounds upon which North seeks to withdraw his plea. The district court must then schedule a new hearing on the motion to withdraw, determine the precise grounds upon which North wishes to proceed, and afford the parties an opportunity to present their evidence relevant to the specific grounds asserted in the motion to withdraw.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. The illegal sentences on Counts 2 and 3 are **VACATED**, and this case is **REMANDED** to the district court for the appointment of new, conflict free counsel and a new hearing on North's application to withdraw pleas consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18,

App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY
THE HONORABLE THOMAS H. ALFORD DISTRICT JUDGE

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OPINION BY: A. JOHNSON, J.
LEWIS, P.J.: Concur
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur
C. JOHNSON, J.: Concur

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