

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

VALENTIN PALOS-TELLOS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION
Case No. C-2009-1192

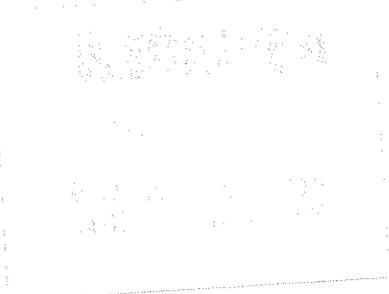
FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
NOV 19 2010

SUMMARY OPINION GRANTING CERTIORARI

MICHAEL S. RICHIE
CLERK

A. JOHNSON, VICE PRESIDING JUDGE:

Petitioner Valentin Palos-Tellos entered blind pleas of *nolo contendere* in the District Court of Kingfisher County, Case No. CF-2008-85, to Assault and Battery with Intent to Kill, in violation of 21 O.S.Supp.2007, § 652 (Count 1), and Attempted Kidnapping, in violation of 21 O.S.Supp.2007, § 741 (Count 2). The Honorable Ronald G. Franklin accepted Palos-Tellos' pleas and after completion of a pre-sentence investigation, sentenced him to life imprisonment on Count 1, and five years imprisonment on Count 2. Judge Franklin ordered Palos-Tellos' sentences to be served concurrently with each other. Palos-Tellos filed a timely motion to withdraw plea, and, after a hearing, the district court denied the motion. Palos-Tellos now appeals the district court's order and asks this Court to grant the Writ of Certiorari and allow him either to withdraw his plea and proceed to trial, reverse and remand his case for a new hearing on his motion to withdraw plea or favorably modify his sentence of life imprisonment on Count 1.



Palos-Tellos' claims in his second and third propositions—namely that his lawyer had a conflict of interest that affected his representation at the hearing on the motion to withdraw plea—require discussion and relief. Because we grant Palos-Tellos' petition for writ of certiorari on those claims, the remaining claims need not be addressed.

We have held that a defendant's right to effective assistance of counsel is violated where an actual conflict of interest exists between the defendant and counsel at a hearing on the defendant's motion to withdraw plea. *See Carey v. State*, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118. Such a conflict existed here. The complaint in Palos-Tellos' motion to withdraw plea was based upon plea counsel's failure to inform him about the elements the State would have to prove at a trial. Thus, his interests at the evidentiary hearing were to testify in support of his claim to establish that his guilty plea was entered involuntarily based on counsel's failure to adequately advise him; the issues of whether plea counsel provided adequate advice and whether Petitioner's plea was knowing and voluntary were not addressed at all. Nor did defense counsel attempt to ask Palos-Tellos questions to develop his claim. Palos-Tellos' attorney stood virtually mute throughout the brief proceeding because the attorney was faced with the dilemma of either trying to prove his client's case against him or disputing his client's claim. Given the claim raised by Palos-Tellos, the district court should have given Palos-Tellos the option of proceeding with conflict-free counsel. This error requires a new evidentiary hearing in accordance with

Palos-Tellos' constitutional right to effective assistance of counsel. The case is remanded for a new hearing on Palos-Tellos' motion to withdraw plea.

DECISION

The Petition for a Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the district court for a hearing on the motion to withdraw plea consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF KINGFISHER COUNTY
THE HONORABLE RONALD G. FRANKLIN, DISTRICT JUDGE

APPEARANCES IN DISTRICT COURT APPEARANCES ON APPEAL

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

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