

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

GENE FREEMAN PRICE,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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)  
) NOT FOR PUBLICATION  
)

) Case No. F-2012-112  
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)  
) FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

FEB 25 2013

SUMMARY OPINION

LUMPKIN, JUDGE:

MICHAEL S. RICHIE  
CLERK

Appellant, Gene Freeman Price, was tried by jury and convicted of First Degree Burglary (21 O.S.2001, § 1431) in the District Court of Atoka County, Case Number CF-2011-183. The jury recommended as punishment imprisonment for twelve (12) years. The trial court sentenced accordingly.<sup>1</sup> It is from this judgment and sentence that Appellant appeals.

Appellant raises a single proposition of error in this appeal:

- I. Mr. Price's conviction should be reversed because the record does not adequately reflect that he knowingly and intelligently waived his right to counsel.

After thorough consideration of the entire record before us on appeal including the original records, transcripts, and briefs of the parties, we have determined that Appellant is entitled to relief.

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<sup>1</sup> A conviction for first degree burglary requires service of not less than 85% of any sentence of imprisonment. 21 O.S.Supp.2009, § 13.1.

In his sole proposition of error, Appellant contends that the record is insufficient to demonstrate that he knowingly and intelligently waived his right to counsel. We agree.

Reviewing the totality of the circumstances in the present case, we find that the trial court abused its discretion. *Mathis v. State*, 2012 OK CR 1, ¶ 18, 271 P.3d 67, 75; *Braun v. State*, 1995 OK CR 42, ¶ 10, 909 P.2d 783, 787. While the trial court may very well have explained the disadvantages and perils of self-representation to Appellant off the record, the colloquy that the trial court conducted on the record was insufficient to establish that Appellant knowingly and intelligently waived his right to the assistance of counsel. *Braun*, 1995 OK CR 42, ¶ 10, 909 P.2d at 787 (“Anything less than a record which shows that the defendant rejected the offer of counsel with knowledge and understanding of the perils of self-representation is not waiver.”).

We note that the colloquies that occurred before preliminary hearing, formal arraignment and trial in the present case all were insufficient to establish that Appellant knowingly and intelligently waived his right to the assistance of counsel. *Norton v. State*, 2002 OK CR 10, ¶ 8, 43 P.3d 404, 407. Therefore, we are forced to conclude that Appellant was denied his right to the assistance of counsel. As this error pervaded the entire proceedings in the present case, it cannot be considered harmless. *Satterwhite v. Texas*, 486 U.S. 249, 257, 108 S.Ct. 1792, 1797, 100 L.Ed.2d 284 (1988) (finding that Sixth Amendment violations that pervade entire proceeding fall within category of constitutional violations that can never be considered harmless); *compare*

*Norton*, 2002 OK CR 10, ¶ 12 43 P.3d at 408 (“denial of counsel at preliminary hearing is subject to harmless-error review.”). Thus, reversal is required.

### DECISION

The judgment and sentence of the trial court is **REVERSED AND REMANDED FOR NEW TRIAL**. 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 ATOKACOUNTY  
THE HONORABLE RICHARD BRANAM, DISTRICT JUDGE

#### APPEARANCES AT TRIAL

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*PRO SE*

AND

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**OPINION BY: LUMPKIN, J.**  
LEWIS, P.J.: CONCUR IN RESULT  
SMITH, V.P.J.: CONCUR  
C. JOHNSON, J.: CONCUR  
A. JOHNSON, J.: CONCUR

#### APPEARANCES ON APPEAL

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