

JUN 13 2005

JEREMY CLARENCE RANKIN, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

MICHAEL S. RICHIE  
CLERK

Case No. C-2004-957

**ORDER GRANTING CERTIORARI AND REMANDING  
FOR A NEW HEARING ON THE MOTION  
TO WITHDRAW PLEA**

Jeremy Clarence Rankin, Petitioner, entered pleas of guilty in Garfield County District Court Case Nos. CF-2002-501, CF-2003-119, CF-2003-317 and CF-2003-474. He filed a motion to withdraw pleas which was denied by the trial court. He is now before this Court on Certiorari appeal from that decision.

Part of Rankin's claim in his motion to withdraw plea at the trial court was that he received ineffective assistance of counsel, because "counsel was ineffective in explaining to the Defendant the implications and potential range of sentences as demonstrated by the Defendant's understanding of his eligibility for suspended sentences." Rankin was represented at the plea hearing and at the motion to withdraw hearing by the same appointed attorney. At the hearing on the motion to withdraw, however, the attorney did not present any argument, nor did he present any witnesses. The attorney

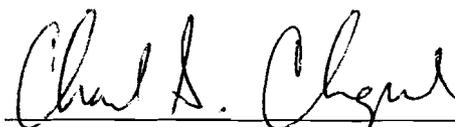
merely stated, "I will stand on the matters set forth in the application to withdraw plea."

We find based on the record that an actual conflict existed between Rankin and counsel at the motion to withdraw hearing, because the allegations placed counsel in the potential position of being a witness adverse to his client. See *Carey v. State*, 1995 OK CR 55, 902 P.2d 1116, 1118, and Rule 1.7(b), Rules of Professional Conduct, 5 O.S.2001, Ch. 1, App. 3-A. Furthermore, the allegations prevented counsel from being an effective advocate for his client; therefore, we remand this case to the district court for a new hearing on Rankin's motion to withdraw. The trial court shall appoint conflict free counsel to represent Rankin at this hearing, if Rankin remains indigent as previously found by the trial court.

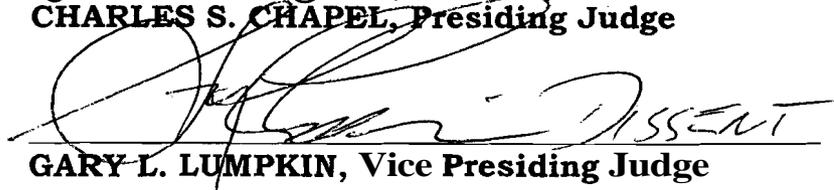
**IT IS THEREFORE THE ORDER OF THE COURT** that Rankin's Petition for Certiorari is **GRANTED** and this cause shall be **REMANDED** to the District Court for a new hearing on Rankin's motion to withdraw plea.

**IT IS SO ORDERED.**

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13<sup>th</sup> day of June, 2005.



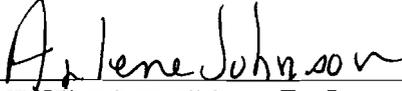
**CHARLES S. CHAPEL, Presiding Judge**



**GARY L. LUMPKIN, Vice Presiding Judge**



**CHARLES A. JOHNSON, Judge**



**ARLENE JOHNSON, Judge**

ATTEST:



**Clerk**

## **LUMPKIN, V.P.J.: DISSENTS**

I must respectfully dissent to the Court's decision to remand the case for a new hearing on the application to withdraw plea. The record does not support the claims of ineffective assistance of counsel. Before remanding the case, this Court should at least call for a response from the State. However, reviewing the record in its entirety, Appellant entered a knowing and voluntary plea. Further, having reviewed the remaining propositions of error, I find no errors warranting relief and would affirm the trial court's denial of the application to withdraw plea.