

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

ROBERT LEE RICHARDSON, JR., )  
 )  
Appellant, )  
v. )  
THE STATE OF OKLAHOMA, )  
 )  
Appellee. )

Not for Publication

Case No. C-2007-1009

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

FEB 24 2009

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION GRANTING CERTIORARI**

**CHAPEL, JUDGE:**

Robert Lee Richardson pled guilty to Count I, Assault and Battery (Misdemeanor) in violation of 21 O.S.2001, § 644(C), and Count II, Malicious Injury to Property (Misdemeanor) in violation of 21 O.S.2001, § 1760, in the District Court of Blaine County, Case No. CM-2007-99. The Honorable Mark A. Moore sentenced Richardson to one(1) year incarceration on each of Counts I and II, a \$100 fine on Count I, and a \$50 fine on Count II. Richardson filed a timely Motion to Withdraw Plea of Guilty, which was denied on October 2, 2007.

Richardson claims, in his single proposition of error, that the trial court erred in failing to hold a hearing on his Motion to Withdraw Plea of Guilty. Richardson is correct. Rather than set a hearing on the motion to withdraw the trial court denied the motion on the pleadings. The record shows neither party waived this hearing; both the State and Richardson asked for a hearing on the motion. According to our Rules, Richardson is entitled to a hearing on his

Motion to Withdraw.<sup>1</sup> A writ of certiorari is treated as an appeal of right from a guilty plea, and this Court's procedural Rules governing the method of that appeal have the force of law.<sup>2</sup> This Court has held that a hearing on a motion to withdraw a guilty plea is a critical stage of a criminal prosecution.<sup>3</sup> The Petition for Writ of Certiorari is granted, and the case is remanded to the district court for a hearing on Richardson's motion to withdraw his plea.

### Decision

The Petition for Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the District Court for a hearing on Richardson's Motion to Withdraw Plea of guilty. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

#### ATTORNEYS AT TRIAL

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ATTORNEY FOR STATE

#### OPINION BY: CHAPEL, J.

C. JOHNSON, P.J.: CONCUR  
A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
LEWIS, J.: CONCUR

#### ATTORNEYS ON APPEAL

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ATTORNEY FOR PETITIONER

NO RESPONSE REQUIRED

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<sup>1</sup> Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2009), provides: "The trial court shall hold an evidentiary hearing and rule on the application within thirty (30) days from the date it was filed."

<sup>2</sup> 22 O.S.2001, § 1051.

<sup>3</sup> *Randall v. State*, 1993 OK CR 47, 861 P.2d 314, 316.