

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 7 2016

MICHAEL S. RICHIE
CLERK

CHARLIE FRANKLIN ROBERTS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

Case No. C-2016-38

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

Charlie Franklin Roberts, Petitioner, entered a plea of no contest to the crime of violation of a protective order in Carter County District Court case number CM-2015-64, and he entered a plea of no contest to the crimes of kidnapping and domestic assault and battery with a dangerous weapon, both after former conviction of two or more felonies, in Carter County case number CF-2015-39, before the Honorable Thomas K. Baldwin, Associate District Judge.¹ Roberts was sentenced to one year in the county jail and a \$1,000 fine on the misdemeanor and thirty (30) years imprisonment on each of the felony crimes. The felony sentences were ordered to run concurrently, but consecutively with the misdemeanor sentence. Roberts, through counsel, filed a motion to withdraw, which alleged no grounds for the withdrawal. After a hearing, the motion was denied by the trial court. Roberts is now before this

¹ The State dismissed charges of first-degree burglary and rape by instrumentation in exchange for the plea.

Court on Certiorari appeal from that decision raising the following propositions of error:

1. Petitioner received ineffective assistance of counsel.
2. Petitioner was misadvised as to the consequences of his plea.
3. There was not a sufficient factual basis for the plea.
4. Cumulative error deprived Mr. Roberts of a fair proceeding.

In most cases, this Court reviews the denial of a motion to withdraw a guilty plea for abuse of discretion. In doing so, this Court's only concern is whether the plea was entered knowingly and voluntarily, and whether the district court accepting the plea had jurisdiction to accept the plea. *Weeks v. State*, 2015 OK CR 16, ¶¶ 11-13, 362 P.3d 650, 653-54. In other cases, this Court will take remedial action when Constitutional standards are not met.

Our review of Petitioner's propositions of error prompted this Court to direct that the State respond to Petitioner's brief in this Certiorari appeal. The State filed its response on October 27, 2016. In its response brief, the State confesses that Petitioner did not receive effective, conflict free, counsel at the hearing on his motion to withdraw plea.

The hearing on the motion to withdraw plea which is required by Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), is a critical stage of a criminal prosecution which invokes a defendant's right to effective, conflict-free counsel. *Carey v. State*, 1995 OK CR 55, ¶ 8, 902 P.2d 1116, 1118. "Counsel cannot be effective if conflicts of interest, no matter how subtle, dull the zeal of undivided loyalty." *Banks v. State*, 1991 OK

CR 51, ¶ 34, 810 P.2d 1286, 1296. Petitioner was not represented by conflict-free counsel on his motion to withdraw plea. Here, Petitioner's perspectives regarding the plea discussions with his attorney were completely divergent from the perspective of his attorney. Consequently, counsel's representation at the plea hearing was "oriented to protect [counsel's] interest . . . rather than to establish [the facts supporting Petitioner's] motion to withdraw the guilty plea." *Carey*, 1995 OK CR 55, ¶ 7, 902 P.2d at 1118.

Petitioner's disdain for counsel began before sentencing, when he indicated that he wished to withdraw his plea prior to sentencing, but counsel did not file the proper motion. The trial court was willing to allow Roberts to file a motion to withdraw plea before sentencing, but counsel requested that sentencing proceed, without consulting Petitioner.

The record clearly reflects that Petitioner was not represented by conflict-free counsel, thus we grant the writ of certiorari and remand this case for the appointment of new conflict-free counsel, and direct the trial court to afford Roberts and new counsel an opportunity to file, within twenty (20) days of this order, a motion setting forth all available legal and factual grounds supporting withdrawal of the guilty plea.

We further direct the trial court to conduct an evidentiary hearing on the motion within thirty (30) days of its filing, as required by Rule 4.2(B). In the event that the motion to withdraw the plea is denied, counsel for Roberts shall thereafter timely comply with this Court's Rule 4.2(D) and all other rules for initiating an appeal from any order denying relief in the court below. "No

matter may be raised in the petition for a writ of certiorari unless the same has been raised in the application to withdraw the plea, which must accompany the records filed with this Court. Rule 4.2(B).

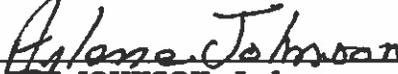
IT IS THEREFORE THE ORDER OF THE COURT that Roberts' Petition for Certiorari is **GRANTED** and this cause shall be **REMANDED** to the District Court for a new hearing on Roberts' motion to withdraw plea.

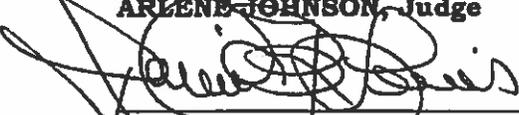
IT IS SO ORDERED.

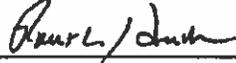
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 7th day of November, 2016.


CLANCY SMITH, Presiding Judge


GARY L. LUMPKIN, Vice Presiding Judge


ARLENE JOHNSON, Judge


DAVID B. LEWIS, Judge


ROBERT L. HUDSON, Judge

ATTEST:


Clerk