



4. The cumulative effect of all of these errors deprived Petitioner of a fair and impartial proceeding.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we grant the petition for writ of certiorari, and remand the case to the district court with orders to conduct a new hearing on the motion to withdraw.

Our decision is based on the failure to have effective counsel to represent him at the withdraw hearing. This Court has long held that the motion to withdraw hearing is a critical stage and a defendant is entitled to an effective attorney at the hearing. *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, 1117. We note that Robinson filed a pro se motion to withdraw stated basically that he wanted to withdraw his plea. His retained counsel filed no motions on Robinson's behalf. Robinson entered his plea in this case on the same day he had other cases set for revocation hearings. Apparently all of the cases were tied together for plea negotiation. In a letter to the court and during the withdraw hearing, Robinson indicated that he did not know that he was entering a plea to the instant offense. Robinson was represented at the plea hearing and at the motion to withdraw hearing by the same attorney. At the hearing on the motion to withdraw, Robinson's attorney became a witness against him disputing his knowledge of the events. Further, this attorney did not present any argument, nor did she present any witnesses.

We find based on the record that an actual conflict existed between Robinson and counsel at the motion to withdraw hearing, because counsel became a witness adverse to her client. See *Carey*, 1995 OK CR 55, ¶ 10, 902 P.2d at 1118, and Rule 1.7(b), *Rules of Professional Conduct*, 5 O.S.2001, Ch. 1, App. 3-A. Therefore, we remand this case to the district court for a new hearing on Robinson's motion to withdraw. The trial court shall appoint conflict free counsel to represent Robinson at this hearing, if Robinson remains indigent as previously found by the trial court.

#### DECISION

Robinson's Petition for Certiorari is **GRANTED** and this cause shall be **REMANDED** to the District Court for a new hearing on Robinson's motion to withdraw plea. 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 OKLAHOMA COUNTY THE HONORABLE VIRGIL C. BLACK, DISTRICT JUDGE

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**OPINION BY: LEWIS, J.**

**C. JOHNSON, P.J.: Concurs**  
**A. JOHNSON, V.P.J.: Concurs in Results**  
**LUMPKIN, J.: Concurs**  
**CHAPEL, J.: Concurs in Results**