

FEB - 6 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

ESTHER SERVIN,)
)
 Petitioner,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION
Case No. C-2003-858

SUMMARY OPINION GRANTING PETITION FOR WRIT OF CERTIORARI

CHAPEL, JUDGE:

Esther Servin pled guilty to two counts of Child Neglect in violation of 10 O.S.2001, § 7115 in Carter County District Court, Case No. CF-2002-299.¹ After a hearing on November 15, the Honorable Thomas S. Walker sentenced Servin to thirty-seven (37) years' imprisonment on one count and ten (10) years on the other count to be served consecutively. Servin timely filed an Application to Withdraw her Plea on November 18, 2002, which was denied after a November 26, 2002 hearing. Servin failed to timely appeal but was granted an appeal out of time by this Court on July 25, 2003.

Servin raises the following propositions of error:

- I. The guilty plea entered by Ms. Servin was not knowing and voluntary. The trial court's acceptance of the plea violated Ms. Servin's federal fourteenth amendment due process rights.
- II. Esther Servin failed to receive effective assistance of trial counsel as guaranteed by the Oklahoma and United States Constitutions.

¹ The State dismissed one count of child neglect.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs, we find that reversal is required by the law and evidence. We find in Propositions I and II that Servin should be allowed to withdraw her pleas in the interests of justice.²

Decision

The Petition for Writ of Certiorari is **GRANTED**.

ATTORNEYS AT TRIAL

DAVID PYLE
222 COLSTON BUILDING
ARDMORE, OKLAHOMA 73401
ATTORNEY FOR DEFENDANT

CRAIG LADD
ASSISTANT DISTRICT ATTORNEY
CARTER COUNTY COURTHOUSE
20 B STREET SW
ARDMORE, OKLAHOMA 73401

ATTORNEYS ON APPEAL

RICHARD H. WALL
216 EAST EUFAULA
NORMAN, OKLAHOMA 73069

CHARLES E. DOUGLAS
P.O. BOX 472
NORMAN, OKLAHOMA 73070
ATTORNEYS FOR PETITIONER

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
NANCY E. CONNALLY
ASSISTANT ATTORNEY GENERAL
2300 N. LINCOLN BOULEVARD
STATE CAPITOL BUILDING
OKLAHOMA CITY, OKLAHOMA 73105
ATTORNEYS FOR RESPONDENT

OPINION BY: CHAPEL, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: DISSENT
LUMPKIN, J.: DISSENT
STRUBHAR, J.: CONCUR

² *Stewart v. State*, 568 P.2d 1297, 1300 (Okla.Cr.1977)(modification of judgment in plea based upon interests of justice).

LILE, VICE PRESIDING JUDGE: DISSENTS

This plea was "knowing and voluntary" in every sense of the phrase. The sentence, although stiff, should be affirmed.

LUMPKIN, JUDGE: DISSENT

This record reveals no basis in law or fact for the Court to invalidate a valid plea. The trial court was thorough in the plea inquiry. Throughout the record, where it appeared the Petitioner did not understand a question being presented to her, she would indicate that she did not understand and the question would be either repeated or rephrased for the Petitioner to more easily understand and at which time she would answer the question appropriately. The wording of the Motion to Withdraw Plea puts this issue into perspective. Petitioner does not allege factual specifics. She only stated “the Defendant feels that . . . 2. That her lawyer mislead her as to the severity of her probably (sic) sentence.” And, “feels” “3. She needed an interpreter and could not understand what was going on in Court or in conversations with her attorney.” Rather than offering specific proof of a factual basis that the trial court erred, she only offered “feelings”. It appears the Court also relies on “feelings” rather than law and facts to reverse this case. I must therefore dissent.