

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

RUSSELL SNOE,)
)
 Petitioner,)
)
 -vs-)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

No. C-2002-633

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 26 2003

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION
GRANTING PETITION FOR WRIT OF CERTIORARI

STRUBHAR, JUDGE:

Russell Snoe, hereinafter Petitioner, entered a guilty plea in the District Court of Muskogee County, Case No. CF-2001-711, to Count I - Lewd and Indecent Proposal to a Child and Count II - Contributing to the Delinquency of a Minor.¹ Associate District Judge Thomas H. Alford accepted the plea and followed the State's sentencing recommendation. The trial court sentenced Petitioner to five years imprisonment on Count I and one year imprisonment on Count II, provided the sentences would be suspended following successful completion of the RID program. The trial court also ordered the sentences to run concurrently and concurrently with the sentences in CF-2001-714 and CF-99-97. Petitioner, in a *pro se* letter to the court, asked to withdraw his plea

which the court treated as a formal request. Following the prescribed hearing, the district court denied Petitioner's application. From the district court's order denying his motion to withdraw plea, Petitioner seeks a Writ of Certiorari.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of Petitioner and Respondent, we grant the petition for a writ of certiorari. In reaching our decision we considered the following propositions of error:

- I. A new hearing on the motion to withdraw plea is required because Mr. Snoe received ineffective assistance of counsel due to a conflict of interest; and
- II. Mr. Snoe's plea was not knowingly and voluntarily made because Petitioner was not advised of the correct range of punishment.

We find merit in Proposition II. The record shows Petitioner entered his plea, in part, to escape having his sentence enhanced when in fact it could not be because deferred sentences cannot be used to enhance punishment. Petitioner entered his plea based on incorrect information about the range of punishment he faced, thereby rendering the plea unknowing and involuntary. *See Hunter v. State*, 825 P.2d 1353, 1355 (Okla. Cr. 1992). Accordingly, relief is required.

¹ Petitioner also entered a guilty plea to one count of Uttering a Forged Instrument and Knowingly Concealing Stolen Property in Case No. CF-2001-714. Petitioner does not challenge his plea to these charges.

DECISION

The Judgment and Sentence of the trial court is **REVERSED** and the petition for a writ of certiorari is **GRANTED**.

APPEARANCES AT TRIAL

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OPINION BY: STRUBHAR, J.

JOHNSON, P.J.: CONCUR
LILE, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR IN RESULT
CHAPEL, J.: CONCUR

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