

2010. Sutton now seeks relief from this Court raising the following propositions:

1. Mr. Sutton's plea was not entered knowingly and voluntarily because he was not informed that he would be required to serve 85% of his sentence, nor was he informed that he would have to register as a sex offender or of the consequences of being a convicted sex offender.
2. Mr. Sutton received ineffective assistance of counsel at the entry of his plea and at the hearing on his application to withdraw plea.
3. Mr. Sutton's sentence of twenty (20) years with eight (8) to serve with eighty-five (85) percent of that time frame being mandatory incarceration is excessive and disproportionate in light of mitigation evidence presented at the sentencing hearing.
4. The judge erred in failing to end the plea withdrawal hearing and appoint conflict counsel.
5. The cumulative effect of all 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, motions and briefs of the parties, we grant Sutton's Writ of Certiorari and order that he be allowed to withdraw his pleas.

In deciding Sutton's Petition, we note that our only concern is whether the plea was entered knowingly and voluntarily. *Fields v. State*, 1996 OK CR 35, ¶ 38, 923 P.2d 624, 631-32. In proposition two, Sutton complains that he was not advised of the statutory limitation (the 85% rule) on parole eligibility for his crimes. In *Pickens v. State*, 2007 OK CR 18, 158 P.3d 482, this Court

held the failure to advise the defendant of this statutory limitation on parole eligibility rendered a blind plea involuntary even though the specific error was not raised during the trial court proceedings.

The 85% rule, as it applies to the crimes charged herein, was enacted and became effective on July 1, 1999, and continues to this day. See 21 O.S. § 13.1. Therefore, Sutton's term of imprisonment will be subject to the 85% mandatory parole eligibility law. However, Sutton was not informed that he would be required to serve 85% of any term before becoming eligible for parole.¹ This error results in pleas that are not entered into knowingly and voluntarily, thus Sutton must be allowed to withdraw the pleas. See *Hunter v. State*, 1992 OK CR 1, ¶ 3, 825 P.2d 1353, 1355. ("a defendant who does not enter the plea knowingly and voluntarily must be allowed to withdraw it").

Our resolution of this issue renders Sutton's remaining propositions moot.

DECISION

Sutton's Petition for Writ of Certiorari is **GRANTED**, the Judgment and Sentence of the district court is hereby **VACATED**, and the case is **REMANDED** for further proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010),

¹ The record reveals that the plea of guilty summary of facts contains proper questions about the 85% rule and the sex offender registry, but Sutton was not required to state whether he understood these consequences.

the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

APPEARANCES AT TRIAL

JIM CONASTER
300 S.E. SHAWNEE
BARTLESVILLE, OK 74003
ATTORNEY FOR DEFENDANT

CHERYL CERDA
ASSISTANT DISTRICT ATTORNEY
FEDERICK ESSER
DISTRICT ATTORNEY
WASHINGTON COUNTY
420 SOUTH JOHNSTONE
BARTLESVILLE, OK 74003
ATTORNEYS FOR STATE

OPINION BY: LEWIS, J.

C. JOHNSON, P.J.: Concurs
A. JOHNSON, V.P.J.: Concurs
LUMPKIN, J.: Concurs

APPEARANCES ON APPEAL

JOHNNY LOMBARDI
APPELLATE DEFENSE COUNSEL
INDIGENT DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR PETITIONER

W.A DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
KEELEY L. HARRIS
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR RESPONDENT