

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

AMANDA MONCELLA THOMPSON, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

**NOT FOR PUBLICATION**

Case No. F-2009-648

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG 31 2011

**SUMMARY OPINION**

**LEWIS, Vice-Presiding Judge:**

MICHAEL S. RICHIE  
CLERK

On September 4, 2007, Appellant, Amanda Moncella Thompson, represented by counsel, entered a plea of guilty to First Degree Manslaughter in Marshall County District Court Case No. CF-2007-155. Thompson's Judgment and Sentence was deferred for five years.

On April 3, 2009, the State filed a motion to accelerate Thompson's Judgment and Sentence.<sup>1</sup> Thompson appeared on June 8, 2009, and stipulated to the allegations contained in the State's motion. The Honorable Richard A. Miller, Associate District Judge, accepted Thompson's stipulation, found her guilty, and ordered a presentence investigation. On July 6, 2009, the court accelerated Thompson's sentence and ordered her to serve seventy years incarceration, with all but the first twenty-five years suspended. From that order of acceleration, Thompson has perfected this appeal.

We find merit in Thompson's first proposition of error. Thompson asserts she has been improperly denied the right to seek a petition for writ of certiorari.

<sup>1</sup> The State alleged Thompson had tested positive for marijuana, benzodiazepines, opiates and alcohol, and had failed to attend drug treatment as ordered by the court. (O.R. 76)

The State argues that because Thompson has not filed a petition for writ of certiorari, the scope of review of this acceleration proceeding is limited to the validity of the acceleration order. *Rule 1.2(D)(5)(b), Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010) (rule establishing appeal procedures form acceleration proceedings and declaring that the “scope of review will be limited to the validity of the acceleration order”).

Thompson responds that she was prevented from seeking a petition for writ of certiorari because the trial court failed to inform her at the time her sentence was accelerated that she had the right to withdraw her guilty plea. Relying on *Lewis v. State*, 2001 OK CR 6, 21 P.3d 880, Thompson contends this error requires relief from this Court. After a review of the record on appeal, we agree.

In *Lewis*, the record revealed that at the time the order deferring the defendant’s judgment and sentence was entered, the defendant was advised of each of his appeal rights, including the right to withdraw his plea. However, at the time of the acceleration, the defendant was advised by the trial court of the right to appeal, but not specifically of the right to seek to withdraw his guilty plea. This Court found that omission to be error, and stated that trial judges should specifically advise defendants of the right to seek to withdraw the guilty plea **at the time of acceleration**. *Id.* at ¶5. (Emphasis added)

In the instant appeal, the transcript of Thompson’s July 6, 2009 acceleration hearing reveals she was not advised of her right to withdraw her

guilty plea after the court accelerated her sentence. The State does not contest this fact. Furthermore, on March 8, 2010, Thompson's counsel attempted to raise this issue through an application for post-conviction relief, seeking an out of time certiorari appeal. The District Court denied relief on June 18, 2010, finding that at the time of the guilty plea, Thompson was advised of her right to withdraw her plea. However, the question of whether Thompson had been advised of her right to withdraw her plea *at the time her plea was accelerated* was not addressed by the District Court in its order denying post-conviction relief.

Because Thompson was not advised of her right to seek to withdraw her plea at the time of acceleration, and because Thompson properly sought an out of time certiorari appeal through a request for post-conviction relief, we **FIND** this matter must be **REMANDED** to the District Court wherein Thompson should be given the opportunity to withdraw her plea. Our finding in this proposition of error renders all other propositions of error moot.

#### **DECISION**

This matter is **REMANDED** to the District Court of Marshall County and the District Court is **ORDERED** to give Amanda Moncella Thompson an opportunity to withdraw her plea in Case No. CF-2007-155. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2011), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF MARSHALL COUNTY  
THE HONORABLE RICHARD A. MILLER, ASSOCIATE DISTRICT JUDGE**

**ATTORNEYS AT TRIAL**

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GARY BROWN  
ASSISTANT DISTRICT ATTORNEY  
MARSHALL COUNTY COURTHOUSE  
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**ATTORNEYS ON APPEAL**

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**OPINION BY:** LEWIS, V.P.J.:  
A. JOHNSON, P.J.: Concur in Result  
LUMPKIN, J.: Concur in Result  
C. JOHNSON, J: Concur  
SMITH, J.: Concur

RA

**LUMPKIN, JUDGE: CONCUR IN RESULT**

I concur in the results reached by the Court based on *Lewis v. State*, 2001 OK CR 6, 21 P.3d 64. However, the wording of the opinion does not correctly set out the procedure that must be followed by the district court on remand. The finding by this Court in this case is the Appellant was not advised of her right to file an Application to Withdraw Plea at the time the deferred sentencing date was accelerated and she was sentenced in this case. This is a right reflected in Rule 1.2(D)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App.(2010). Once that right is established, the Appellant must follow the process set out in Rule 4.2, i.e. file “an application to withdraw the plea within ten (10) days from the date of the pronouncement of the Judgment and Sentence”, or in this case within ten (10) days from the handing down of this opinion. This Court does not automatically grant a Motion to Withdraw Plea without any evidence being presented that there is a factual basis to do so. The district court is the proper place for that evidentiary hearing pursuant to Rule 4.2.

While I agree that our holding in *Lewis* applies, I also find the procedure in Rules 1.2(D)(5) and 4.2 must be followed.