

NOV 27 2012

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

JASON HARVEY THOMPSON,)

Petitioner,)

vs.)

THE STATE OF OKLAHOMA,)

Respondent.)

NOT FOR PUBLICATION

No. C-2012-287

SUMMARY OPINION GRANTING PETITION FOR CERTIORARI

SMITH, JUDGE:

Jason Harvey Thompson pled guilty to Count I, Unlawful Possession of Controlled Drug, After Former Conviction of two or more Felonies in violation of 63 O.S.2011, § 402(B)(1) and Count II, Unlawful Possession of Drug Paraphernalia in violation of 63 O.S.2001, § 2-405 in the District Court of Payne County, Case No. CF-2011-518. In accordance with a negotiated plea agreement, the Honorable Phillip Corley sentenced Thompson to twenty (20) years imprisonment on Count I and one (1) year imprisonment on Count II, to run concurrent to Count I. Thompson was also assessed a \$150.00 OSBI lab fee and ordered to pay court costs and the costs of incarceration. Thompson filed an application to withdraw his plea on March 12, 2012. This was denied on March 14, 2012 by Order, without a hearing on the application. On April 6, 2012, Thompson filed a timely Petition for Writ of Certiorari, raising five propositions of error in support of his petition.

1. Mr. Thompson received ineffective assistance of counsel during the plea bargaining process.
2. The trial court's failure to hold the required evidentiary hearing on Mr. Thompson's motion to withdraw plea necessitates that the case be remanded.

3. The trial judge failed to inquire into Mr. Thompson's competence to enter the pleas.
4. Mr. Thompson should be allowed to withdraw his guilty pleas because an adequate factual basis was not established.
5. The Judgment and Sentence should be corrected by an Order *nunc pro tunc*.

After thorough consideration of the entire record before us, including the original record, transcripts, and brief, we find the petition must be granted and the case remanded for a hearing on Thompson's application to withdraw his plea.

Oklahoma Court of Criminal Appeals Rule 4.2B requires that the trial court hold an evidentiary hearing on an application to withdraw plea. Rule 4.2(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011). This rule is not discretionary. Proposition II is granted, and the case remanded for a hearing. Because this is settled law, no response from the State is necessary. Furthermore, our resolution of Proposition II renders Propositions I, III and IV moot.

In Proposition V Thompson points out that the Judgment and Sentence document lists Count I as a violation of 63 O.S. § 2-401(B)(1). It should reflect the correct statutory designation: 63 O.S. § 2-402(B)(1). In addition to the new hearing granted Thompson based upon Proposition II, we also remand the case for correction of the Judgment and Sentence document, through an Order *nunc pro tunc* by the district court. *Neloms v. State*, 2012 OK CR 7, ¶ 45, 274 P.3d 161, 172.

DECISION

The Petition for Writ of Certiorari is **GRANTED** and the case is **REMANDED** for a hearing on the application to withdraw the plea and for correction of the Judgment and Sentence document, through an Order *nunc pro tunc* by the district court, in accordance with this opinion. Pursuant to Rule 3.15, *Rules of the*

Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PAYNE COUNTY
THE HONORABLE PHILLIP C. CORLEY, DISTRICT JUDGE

ATTORNEYS AT TRIAL

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OPINION BY: SMITH, J.

A. JOHNSON, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
C. JOHNSON, J.: CONCUR

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NO RESPONSE REQUIRED