

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

EDGAR LEE USSERY,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

**NOT FOR PUBLICATION**

Case No. C-2011-875

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

SEP 12 2012

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION DENYING**  
**WRIT OF CERTIORARI**

**LEWIS, VICE-PRESIDING JUDGE:**

Petitioner, Edgar Lee Ussery, entered blind pleas of *nolo contendere* to Counts 1 and 2, possession of a controlled dangerous substance with intent to distribute, in violation of 63 O.S.Supp.2005, § 2-401(B)(2), after former conviction of one (1) felony, in the District Court of Seminole County, Case No. CF-08-348B. By agreement, Petitioner was diverted to the Drug Court program, with a sanction of twenty (20) years imprisonment in each count in the event of his failure to complete the program. The Hon. George Butner, District Judge, later granted the State's application to terminate Petitioner's participation in Drug Court and accelerate sentencing. The district court sentenced Petitioner to twenty (20) years imprisonment in each count, to be served concurrently. Petitioner then timely moved to withdraw his plea. Following an evidentiary hearing, the district court denied the motion to withdraw.

Petitioner raises the following propositions of error on certiorari:

1. The trial court abused its discretion by prematurely terminating Mr. Ussery's participation in Drug Court, in lieu of imposing disciplinary sanctions against Appellant;
2. Mr. Ussery did not knowingly and voluntarily enter his pleas in the instant case. Because Appellant's pleas were entered as the result of coercion and confusion, the trial court abused its discretion by denying Mr. Ussery's motion to withdraw his pleas;
3. The Court should remand Mr. Ussery's case to the District Court of Seminole County with instructions to correct the judgment and sentence by an order *nunc pro tunc*.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. Review of the denial of a motion to withdraw a plea is limited to two inquiries: (1) whether the guilty plea was made knowingly and voluntarily; and (2) whether the district court accepting the guilty plea had jurisdiction to accept the plea. *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251. We review Petitioner's termination from Drug Court for an abuse of the district court's discretion. *Lewis v. State*, 2009 OK CR 30, ¶ 10, 220 P.3d 1140, 1143.

In Proposition One, Petitioner argues the district court abused its discretion in terminating him from Drug Court. The record reflects that Petitioner committed new felony offenses unrelated to substance abuse and not the result of a relapse. The district court's ruling was not an abuse of discretion. 22 O.S.2011, § 471.7(E). Proposition One is denied.

Proposition Two argues that Petitioner's pleas of guilty were not knowing and voluntary. We find that the district court properly advised Petitioner of his trial rights, and that Petitioner knowingly waived those rights at the time he entered his plea of *nolo contendere*. *Hopkins v. State*, 1988 OK CR 257, ¶ 2, 764 P.2d 215, 216. Proposition Two is denied.

Petitioner claims in Proposition Three that the judgment and sentence does not reflect that he was granted credit for time served, and incorrectly recites that he was convicted after two (2) prior felony convictions. From the range of punishment given at the time of plea, it is apparent that Petitioner was convicted and sentenced *in this case* using only one (1) of his former convictions for enhancement.<sup>1</sup> We therefore remand this matter to the district court for correction of the judgment and sentence to reflect that Petitioner will receive credit for time served, and that only one (1) of his former convictions was used for enhancement in this case. No further relief is required.

### **DECISION**

The Petition for the Writ of Certiorari is **DENIED**. The Judgment and Sentence of the District Court of Seminole County is **REMANDED** for corrections *nunc pro tunc*, and otherwise **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2012), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

---

<sup>1</sup> The record reflects that Petitioner sustained two (2) prior felony convictions in Seminole County Case No. CF-2006-13: Count 1, unlawful possession of a controlled dangerous substance with intent to distribute; and Count 2, unlawful delivery of a controlled dangerous substance. Petitioner also admitted in his testimony that he may have prior convictions from other jurisdictions.

**AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY  
THE HONORABLE GEORGE BUTNER, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

MEGAN BROOKING (PLEA)  
P.O. BOX 1711  
ADA, OK 74820

WILLIAM HUSER (WITHDRAWAL)  
107 S. WEWOKA  
WEWOKA, OK 74884

**ATTORNEYS FOR DEFENDANT**

KAY HARGRAVE  
ASST. DISTRICT ATTORNEY  
SEMINOLE COUNTY COURTHOUSE  
WEWOKA, OK 74884

**ATTORNEY FOR THE STATE**

OPINION BY LEWIS, V.P.J.  
A. JOHNSON, P.J.: Concurs  
LUMPKIN, J.: Concurs  
C. JOHNSON, J.: Concurs  
SMITH, J.: Concurs

**APPEARANCES ON APPEAL**

ANDREAS T. PITSIRI  
OKLA. INDIGENT DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070-0926

**ATTORNEY FOR PETITIONER**

**NO RESPONSE NECESSARY**