

DEC 27 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

TIMOTHY MARK WATKINS,)	
)	
Petitioner,)	NOT FOR PUBLICATION
v.)	Case No. C-2004-1156
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

On August 16, 2004, Timothy Mark Watkins entered an Alford plea to Count I: Child Abuse/Neglect in violation of 10 O.S.2001, § 7115, Count II: Child Abuse/Neglect in violation of 10 O.S.2001, § 7115, and Count III: Rape, First Degree in violation of 21 O.S.2001, § 1114(A)(1) in the District Court of Caddo County, Case No. CF-2003-171, before the Honorable David E. Powell.¹ On October 13, 2004, the Honorable Richard G. Van Dyck, District Judge sentenced Watkins to three terms of life in prison, the first two concurrent, the third consecutive. On October 20, 2004, Watkins timely filed a Motion to Withdraw Guilty Plea, which was denied at a November 3, 2004, hearing before the Honorable Richard G. Van Dyck. Watkins timely appealed to this Court on November 12, 2004. The current petition for certiorari followed.²

¹ Watkins was also charged with Count IV: Rape, Second Degree in violation of 21 O.S.2001, § 1116, Count V: Incest in violation of 21 O.S.2001, § 885, and Count VI: Forcible Sodomy in violation of 21 O.S.2001, § 888. While the record does not state so explicitly, it appears Counts IV, V, and VI were dismissed at the plea acceptance hearing.

² This Court ordered and received a Response from the State.

Watkins raises the following proposition of error:

- I. Mr. Watkins should be allowed to withdraw his Alford pleas of guilty because the pleas were not knowingly and intelligently entered into by Petitioner; instead they were made with inadvertence and by mistake.

After thoroughly considering the entire appellate record, including the original record, transcripts, and briefs and exhibits of the parties, we find that the petition for certiorari should be granted. We find in Proposition I that the trial court abused its discretion in refusing to allow Watkins to withdraw his Alford plea.³

Decision

Accordingly, the writ of certiorari is **GRANTED**, and this matter is **REMANDED** for further proceedings not inconsistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch18, App.2004, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

³ While the plea was referred to as a blind plea, it is clear the parties negotiated the plea, contrary to the idea of a blind plea where there is no agreement between the State and the defendant. The trial court should have allowed Watkins to withdraw his plea prior to sentencing when it chose not to follow the recommendation of the State. *King v. State*, 1976 OK CR 103, 553 P.2d 529, 535-536.

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OPINION BY: CHAPEL, P. J.

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

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LUMPKIN, VICE-PRESIDING JUDGE: DISSENTING

This case has nothing to do with lack of a free, voluntary, knowing plea of guilty, because the record is clear the Petitioner was fully aware of what he was doing. This is a case of “buyer’s remorse”, pure and simple. And, as the State points out in its Response,

In *Lozoya v. State*, 1996 OK CR 55, ¶44, 932 P.2d 22, 34, this Court held that dissatisfaction with the sentence received is not a sufficient reason for allowing a defendant to withdraw his plea.

Anyone who has presided over a criminal docket on the District Court bench or practiced criminal law in the Courts of this State would recognize what took place in this case. The parties could not come to an agreement on the sentence to be assessed in the case if the Petitioner pled guilty. The way that point of contention is resolved in Courts throughout the State, every day of the week, is an agreement that allows the defendant to enter a plea to certain charges and request a pre-sentence investigation with the understanding the State will argue for a particular sentence but the sentencing judge will not be bound by any plea agreement. That is what was done in this case. The Petitioner entered his blind plea and requested his pre-sentence report for the sentencing judge to review. He was informed the judge would not be bound by any recommendations and could sentence within the range of punishment. The State made its argument and defense counsel made his argument, followed by the judge’s independent decision as to the appropriate sentence. That was

what the Petitioner agreed to and that was what he received. There was no error.

Petitioner has not raised any proposition of error regarding a claim of excessive sentence. Therefore, there is nothing else to adjudicate. His claim must fail and the Petition for Writ of Certiorari **DENIED**.