

FILED
 IN COURT OF CRIMINAL APPEALS
 STATE OF OKLAHOMA
 MAY 30 2002
 JAMES W. PATTERSON
 CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

BYRON LYNN WHITE,)
)
 Petitioner,)
 v.)
)
 STATE OF OKLAHOMA)
)
 Respondent.)

Case No. C-2001-1425

**ORDER REMANDING FOR A PROPER HEARING ON
 MOTION TO WITHDRAW GUILTY PLEA**

On February 3, 2000, Petitioner, Byron Lynn White, entered a guilty plea in the District Court of Mayes County, to the crime of First Degree Murder, in Case No. CF-99-105. The plea was accepted by the Honorable James D. Goodpaster. On April 4, 2000, the district court sentenced Petitioner to life imprisonment. A timely appeal was not perfected. On May 29, 2001, Petitioner filed a pro se application for an appeal out of time in the district court. On July 11, 2001, the district court entered an order finding that Petitioner should be granted an appeal out of time. This Court issued an order on October 9, 2001, granting Petitioner an appeal out of time and directing trial counsel to represent Petitioner in all district court proceedings related to the application to withdraw. Less than a week later, Petitioner filed a pro se application to withdraw his guilty plea in the District Court of Mayes County. Therein, he listed several grounds supporting his application, including two claims of ineffective assistance of counsel. On October 25, 2001, Petitioner's counsel of

record, pursuant to this Court's directive, filed in the district court a motion to set aside Petitioner's guilty plea. He listed no grounds supporting his request.

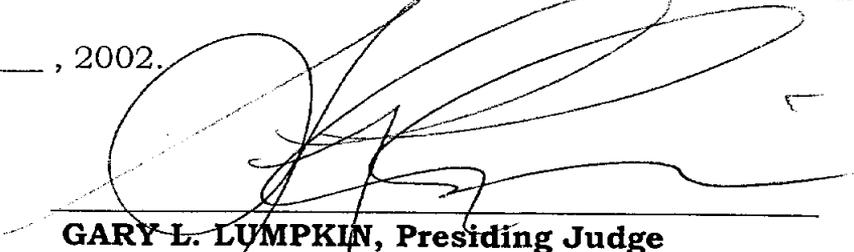
On November 20, 2001, a hearing was held before the Honorable James D. Goodpaster on Petitioner's motion to withdraw. For reasons not apparent from the record, Petitioner was not present at this hearing. His attorney of record appeared and made no argument in support of Petitioner's application. Although the entire text of the record of this hearing is less than two pages in length, it is clear that Petitioner's attorney had not even read the pro se application filed by Petitioner. The district court denied the motion to set aside the guilty plea.

Petitioner, through appointed counsel, has filed with this Court an appeal from the district court's denial of his application to withdraw. Petitioner asserts that he was denied his constitutional right to due process because the hearing on the motion to withdraw was conducted in his absence without a waiver of his right to be present at this critical stage. He also complains that he was denied effective assistance of counsel as his attorney of record did absolutely nothing to advocate his position. Petitioner is right. A hearing on a motion to withdraw is a critical stage at which a defendant has both the right to be present and the right to effective assistance counsel. *Randall v. State*, 861 P.2d 314, 316 (Okl.Cr.1993). Petitioner was neither present nor was he effectively represented by counsel at this hearing. We remand this case to the District Court of Mayes County for a proper hearing on Petitioner's application

to withdraw his guilty plea. We also direct that Petitioner be present at this hearing and that he be appointed counsel to represent him.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 30th day of May, 2002.



A large, stylized handwritten signature in black ink, appearing to read 'Gary L. Lumpkin', written over a horizontal line.

GARY L. LUMPKIN, Presiding Judge



A handwritten signature in black ink, appearing to read 'Charles A. Johnson', written over a horizontal line.

CHARLES A. JOHNSON, Vice Presiding Judge



A handwritten signature in black ink, appearing to read 'Charles S. Chapel', written over a horizontal line.

CHARLES S. CHAPEL, Judge



A handwritten signature in black ink, appearing to read 'Reta M. Strubhar', written over a horizontal line.

RETA M. STRUBHAR, Judge



A handwritten signature in black ink, appearing to read 'Steve Lile', written over a horizontal line.

STEVE LILE, Judge

ATTEST:



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Clerk