

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KORY WILLIAMS,)
)
 Petitioner,) NOT FOR PUBLICATION
)
 v.) Case No. C 2008-1183
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OPINION GRANTING CERTIORARI

FEB - 4 2010

MICHAEL S. RICHIE
CLERK

LEWIS, JUDGE:

Petitioner, Kory Williams, on June 20, 2008, entered blind pleas of no contest to the crimes of:

- (1) shooting with intent to kill in violation of 21 O.S.2001, § 652(A);
- (2) assault with a deadly weapon in violation of 21 O.S.Supp.2005, § 652;
- (3) feloniously possession of a firearm in violation of 21 O.S.2001, § 1283;
- (4) possession of a sawed-off shotgun in violation of 21 O.S.2001, § 1289.18; and
- (5) receiving or concealing stolen property in violation of 21 O.S.2001, § 1713,

in Muskogee County Case No. CF-2007-204, before the Honorable Michael Norman, District Judge.¹ Sentencing was set off for the purposes of

¹ The Information indicates that he was also charged with having a prior felony conviction, although during the preliminary hearing the prosecution asked to have the second page dismissed.

having a pre-sentence investigation completed. At sentencing, on November 17, 2008, Judge Norman sentenced Williams to life on counts one and two and ten (10) years on counts 3-5. All sentences were ordered to be served concurrently.

Williams filed several pro-se letters indicating that he wanted to withdraw his plea before formal sentencing. Counsel filed on December 1, 2008, a "renewed application to withdraw plea" which incorporated Williams's hand written requests, as well as claiming that his plea was not voluntary and his sentences are excessive and he was unaware he could receive the sentences given. A hearing was held on December 8, 2008, before Judge Norman who denied the motion.²

Williams has perfected this appeal and raises the following propositions of error:

1. Mr. Williams' pleas of no contest were not knowing, intelligent and voluntary, because he was either sentenced using the incorrect punishment ranges, or misadvised regarding the available ranges.
2. The trial court erred in accepting Mr. Williams' plea and count 4 must be dismissed because the evidence failed to show that Mr. Williams possessed a sawed-off shotgun.
3. Alternatively, Mr. Williams' conviction for both count 3, possession of a firearm after conviction or during probation, and count 4, possession of a sawed-off shotgun violate the protections against double jeopardy and double punishment.

² No transcript was made of this hearing, thus it is impossible to determine what Williams argued at the hearing in support of his motion.

4. Reversal is required because Mr. Williams was denied his right to the effective assistance of counsel throughout his plea, sentencing, and at the hearing on his application to withdraw his plea.
5. The concurrent maximum sentences imposed after Mr. Williams entered a blind plea are shockingly excessive and must be modified.
6. Cumulative errors deprived Mr. Williams of a fair proceeding and reliable outcome.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we grant the petition for certiorari, vacate the judgment and sentence, and remand for further proceedings consistent with this Opinion.

In deciding Williams' appeal from the district courts denial of his motion to withdraw, based on proposition one, we find that his plea was not knowingly and voluntarily entered. Our decision is based on our duty to determine whether the guilty plea was entered knowingly and voluntarily and whether the district court accepting the plea had jurisdiction to accept the plea. *Cox v. State*, 2006 OK CR 51, ¶ 4, 152 P.3d 244, 247. This Court has expressly stated that in order to have a knowing and voluntary plea, the defendant must be advised of the proper range of punishment prior to accepting a guilty or no contest plea. *Hunter v. State*, 1992 OK CR 1, ¶ 4, 825 P.2d 1353, 1355 (Holding that because "plea cannot be entered into knowingly where the defendant is not aware of the possible sentence, this Court has imposed the duty on the trial court to advise a criminal defendant of the possible sentence

prior to accepting a guilty plea.”); *Walters v. State*, 1989 OK CR 43, ¶ 2, 778 P.2d 483, 484; *King v. State*, 1976 OK CR 103, ¶ 10, 553 P.2d 529, 535.

In this case, the plea of no contest summary of facts is the only record we have of the plea hearing.³ In that document, ranges of punishment are set forth as if Williams was a first offender; however, it also states that he is charged after former conviction of a felony. At sentencing, which was recorded, the range of punishment established by the trial court was the enhanced range indicating that Williams was pleading “after former conviction of a felony.” With the record presented to this Court it is impossible to determine whether Williams was entering his plea as a first time offender or as one having been charged with a former felony conviction. The confusion in the range of punishment presented on the record could not have provided Williams sufficient information to enter a knowing and voluntary plea, thus this Court has no choice but to grant his Petition for Certiorari and allow him to withdraw his plea.⁴

DECISION

Williams’ petition for a writ of certiorari is **GRANTED**. Williams is allowed to withdraw his guilty plea and the judgment and sentence of the District Court

³ It is inconceivable that the plea proceedings were not recorded, especially given the fact that Williams was entering a no-contest blind plea, facing life imprisonment, and had been involved in competency proceedings in connection with this case.

⁴ Williams’ remaining propositions become moot due to the resolution of proposition one; however, on remand, the parties should take particular note of propositions two and three. See 21 O.S.2001, § 1289.18; 21 O.S.2001, § 11; and *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126.

is **VACATED**. This case is **REMANDED** to the District Court for further proceedings consistent with the Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY,
HONORABLE MICHAEL NORMAN, DISTRICT JUDGE, PRESIDING

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OPINION BY: LEWIS, J.

C. JOHNSON, P.J.: Concur
A. JOHNSON, V.P.J.: Concur
LUMPKIN, J.: Concur in Results
CHAPEL, J.: Concur