

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

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT - 4 2018

JOHN D. HADDEN
CLERK

HEATH JUSTIN WRIGHT,)
)
 Petitioner/Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent/Appellee.)

NOT FOR PUBLICATION

**Case Nos. C-2017-1311
F-2017- 1304¹**

SUMMARY OPINION GRANTING CERTIORARI

ROWLAND, JUDGE:

Petitioner/Appellant Heath Justin Wright entered, without counsel, a negotiated plea of guilty in the District Court of Pontotoc County, Case No. CF-2015-43, to Second Degree Burglary (Count 1) in violation of 21 O.S.2011, § 1435, Knowingly Concealing Stolen Property (Count 2) in violation of 21 O.S.2011, § 1713 and Unlawful Possession of a Controlled Dangerous Substance (Count 3) in violation of 63 O.S.Supp.2012, § 2-402, each after previous conviction of two felonies. The Honorable Gregory D. Pollard

¹On our own motion, we consolidate these cases for disposition together for reasons of judicial economy. Rule 3.3(D), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018).

accepted Wright's plea and, pursuant to the plea agreement, placed him in the Pontotoc County Drug Court. Under the terms of the plea agreement, Wright's successful completion of the drug court program would result in the dismissal of his charges and expungement of his record while failure would result in the imposition of a twenty-five year sentence on each count to be served concurrently. Wright, by counsel, moved to withdraw his plea after the State filed an application to terminate him from the drug court program and enforce the terms of the plea agreement. The Honorable C. Steven Kessinger held the required hearing and denied Wright's motion. The district court terminated Wright from the drug court program and sentenced him pursuant to the plea agreement to twenty-five years on each count. Wright appeals the denial of his motion to withdraw plea, raising one issue.

(1) whether ineffective assistance of counsel requires relief.

We find relief is required and grant the writ of certiorari. Granting the writ of certiorari in this case renders moot Wright's claim in his drug court appeal in Case No. F-2017-1304.

1. Ineffective Assistance of Counsel

Wright claims he is entitled to relief based on ineffective assistance of counsel. The burden is on Wright to prove (1) that counsel's performance was deficient and (2) that counsel's deficient performance resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Wiley v. State*, 2008 OK CR 30, ¶ 4, 199 P.3d 877, 878. He must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial or that the outcome of the plea process was otherwise affected. *Lozoya v. State*, 1996 OK CR 55, ¶ 27, 932 P.2d 22, 31.

Wright entered his plea for drug court without the benefit of counsel. He signed a Waiver of Counsel and affirmed that waiver during the plea colloquy. Neither in the written waiver nor during the plea colloquy was Wright advised of the dangers and disadvantages of self-representation. Wright did not challenge the adequacy of his waiver of counsel in his motion to withdraw or during the hearing on that motion. Defense counsel renewed

Wright's motion to withdraw after the prescribed hearing. The district court denied both of Wright's motions to withdraw his plea.

Wright contends that the attorney he retained to pursue withdrawing his guilty plea forfeited his meritorious claim challenging the adequacy of his waiver of counsel resulting in prejudice. At this Court's direction, the State responded, conceding error and agreeing that the case must be remanded to the district court with instructions to permit Wright to withdraw his plea and proceed to trial on all counts. Wright's waiver of counsel was deficient because he was not advised of the dangers and disadvantages of self-representation. See *Lamar v. State*, 2018 OK CR 8, ¶ 29, 419 P.3d 283, 292. Had counsel challenged the adequacy of Wright's waiver of counsel, the district court would have granted Wright's application to withdraw plea and remanded the matter for trial. Because Wright has satisfied both of the prongs of the *Strickland* test, we grant the writ and remand the matter with instructions to allow Wright to withdraw his plea and proceed to trial.

DECISION

The Petition for a Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the District Court of Pontotoc County to allow Wright to withdraw his plea and proceed to trial on all counts. Wright's appeal in Case No. F-2017-1304 is **DENIED as MOOT**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT
OF PONTOTOC COUNTY
THE HONORABLE C. STEVEN KESSINGER, DISTRICT JUDGE**

**APPEARANCES IN THE
DISTRICT COURT**

HEATH JUSTIN WRIGHT
PRO SE

BRECKAN A. WAGNER
ATTORNEY AT LAW
2626 S. 14TH ST., SUITE C-10
McALESTER, OK 74501
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

ROBERT W. JACKSON
APPELLATE DEFENSE
COUNSEL
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR
PETITIONER/APPELLANT

JOHN HUBBARD
JAMES E. TILLISON
ASST. DISTRICT ATTORNEYS
105 W. 13TH
ADA, OK 74820
COUNSEL FOR STATE

MIKE HUNTER
ATTORNEY GENERAL
OF OKLAHOMA
AMBER MASTERS
THEODORE M. PEEPER
ASSISTANT ATTORNEY
GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE/
RESPONDENT

OPINION BY: ROWLAND, J.

LUMPKIN, P.J.: Concur
LEWIS, V.P.J.: Concur
HUDSON, J.: Concur
KUEHN, J.: Concur