

NOV 22 1999

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KEVIN LEE HILTON,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

)
) **NOT FOR PUBLICATION**
)

) Case No. C-99-762
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)

SUMMARY OPINION GRANTING PETITION FOR WRIT OF CERTIORARI

CHAPEL, JUDGE:

Kevin Lee Hilton pled guilty in the District Court of Craig County in Case No. CF-96-78 to Grand Larceny in violation of 21 O.S.1991, § 1701, after former conviction of two or more felonies. He pled guilty in Case No. CF-98-157 to Escape From County Jail in violation of 21 O.S.1991, § 443(A), after former conviction of two or more felonies. In accordance with a negotiated plea, the Honorable H. M. Wyatt sentenced Hilton to twenty (20) years imprisonment in each case, to run concurrently.¹ Hilton filed a *pro se* motion to withdraw his plea on May 7, 1999. This motion was denied after a May 26 hearing. Hilton petitions for a writ of certiorari.

Hilton raises two propositions of error in support of his petition:

- I. Hilton was denied effective assistance of counsel and
- II. The guilty pleas were invalid because the trial court failed to establish any adequate factual bases for the pleas.

¹ Hilton had received a seven (7) year suspended sentence in CF-95-90. This was revoked at the plea hearing and ran concurrently with the other two sentences.

After thorough review of the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we grant the Petition for a Writ of Certiorari in so far as we remand this matter to the district court for a proper hearing on the motion to withdraw guilty plea. We find in Proposition I that Hilton was inappropriately required to present his motion to withdraw plea *pro se* because his appointed attorney had an actual conflict of interest, in violation of the Sixth Amendment's guarantee of effective assistance of counsel.² We find Proposition II was not raised or argued in Hilton's Motion to Withdraw Plea and is not properly before the Court.³

Decision

The Petition for a Writ of Certiorari is **GRANTED** and case **REMANDED** to the District Court for a new hearing on the motion to withdraw plea in a manner consistent with this Opinion.

APPEARANCES AT TRIAL

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² *Carey v. State*, 902 P.2d 1116, 1118 (Okla.Cr.1995) (attorney has actual conflict of interest where petitioner alleges ineffective assistance of counsel as basis for motion to withdraw plea); *Randall v. State*, 861 P.2d 314, 316 (Okla.Cr.1993) (error not harmless where Court cannot determine with certainty petitioner would not be allowed to withdraw plea).

³ Rule 3.4(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (1999). Although we do not consider the merits of the proposition, we note the insufficient factual basis precludes a finding that the error in Proposition I was harmless.

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OPINION BY: CHAPEL, J.

STRUBHAR, P.J.:	CONCUR
LUMPKIN, V.P.J.:	CONCUR IN RESULTS
JOHNSON, J.:	CONCUR
LILE, J.:	CONCUR