

FILED
 IN COURT OF CRIMINAL APPEALS
 STATE OF OKLAHOMA
 NOV 9 1999
 JAMES W. PATTERSON
 CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TRENT ARDENT PROCTOR,)
)
 Appellant,)
 v.)
)
STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. C-99-423

SUMMARY OPINION GRANTING PETITION FOR WRIT OF CERTIORARI

CHAPEL, JUDGE:

Trent Ardent Proctor pleaded guilty to First Degree Murder in violation of 21 O.S.1991, § 701.7, in the District Court of Caddo County, Case No. CF-96-68. Pursuant to the plea agreement, the Honorable David E. Powell sentenced Proctor to life imprisonment. Proctor timely filed a motion to withdraw his plea. Following a hearing on the motion, the district court denied the request.

Proctor filed a petition for writ of certiorari with this Court on December 12, 1997. This Court granted the Petition for Writ of Certiorari by unpublished opinion, finding an inadequate factual basis to support the plea; as a result, we held the trial court abused its discretion in denying Proctor's motion to withdraw.¹ This matter was then reversed and remanded. Notwithstanding our opinion, the trial court held another hearing on the original motion to withdraw the plea and again denied the motion to withdraw. From this denial, Proctor appeals.

¹ *Proctor v. State*, No. C-97-1583, slip. op. at 2 (Okl.Cr.Nov.4,1998).

Proctor raises the following propositions of error in support of his Petition for Writ of Certiorari:

- I. The trial court had no authority or jurisdiction to hold a post appeal hearing concerning appellant's motion to withdraw his guilty plea;
- II. Even if one considers the invalid hearing, Proctor should have been allowed to withdraw his plea because the trial court still failed to establish an adequate factual basis for the plea; and
- III. Even at the invalid district court hearing, reversible error occurred when the trial court failed to inform Proctor of each element of the crime charged.

After thorough review of the entire record on appeal including the original record, transcripts, and brief of Petitioner, we find merit in Proctor's propositions of error. Under Proposition I, we find the trial court failed to follow our reversal order and allow Proctor to withdraw his plea.² Rather, the trial court held *another* hearing on the original motion to withdraw the plea. We agree with Petitioner that the trial court was without authority to do so. The original hearing had already been held on November 13, 1997. This Court found the trial court abused its discretion in overruling Proctor's motion to withdraw his plea at the conclusion of that hearing.³ Nothing in our opinion authorized the trial court to conduct yet another hearing on matters previously litigated and decided on

² The case we relied on in reversing and remanding this matter clearly stands for the proposition that when the factual basis for a plea is inadequate, the Petitioner will be allowed to withdraw his plea. *Zakszewski v. State*, 739 P.2d 544, 546 (Okla. Cr. 1987). Like the instant case, *Zakszewski* "reversed and remanded for further proceedings consistent with this opinion." *Id.* This language is not intended to be construed as a way for the district court to hold further hearings on the original application - if an adequate factual basis has not been established at the time of the plea, the trial court will not be given endless opportunities to later create one.

³ *Proctor v. State*, No. C-97-1583, slip. op. at 2 (Okla. Cr. Nov. 4, 1998) [hereinafter *Proctor* ¶].

appeal. Proceeding in such a manner was wholly inconsistent with our opinion in *Proctor I*.⁴

When a trial court does not follow our mandate, the matter will be reversed with directions to proceed in conformity with the original opinion.⁵ This matter is again remanded to the district court with instructions to permit Proctor to withdraw his plea of guilty, for the reasons stated in our original opinion.

Decision

The Petition for Writ of Certiorari is **GRANTED**, and the Judgment and Sentence of the trial court denying Proctor's motion to withdraw his plea is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

ATTORNEYS AT TRIAL

LARRY MONARD
5901 N. WESTERN STE. 206
OKLAHOMA CITY, OK 73118
ATTORNEY FOR DEFENDANT

RICHARD KIRBY
ASSISTANT DISTRICT ATTORNEY
CADDO COUNTY COURTHOUSE
ANADARKO, OKLAHOMA
ATTORNEY FOR THE STATE

ATTORNEY ON APPEAL

DANNY G. LOHMANN
APPELLATE DEFENSE COUNSEL
1623 CROSS CENTER DRIVE
NORMAN, OKLAHOMA 73019
ATTORNEY FOR PETITIONER

STATE- NO RESPONSE DIRECTED

⁴ *Belt v. State ex rel. Dept. of Public Safety*, 959 P.2d 994, 997 (Okla.App.1998) (When a cause is reversed and remanded by the appellate court, and the mandate is received and entered of record by the trial court, the trial court is vested with jurisdiction to make any order or enter any judgment in the further progress of the cause **not inconsistent with the decision of the appellate court . . .**") (emphasis added).

⁵ *Johnston v. Dill*, 64 P.2d 329, 330 (Okla. 1937).

OPINION BY: CHAPEL, J.

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