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

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Respondent.	) // // // // // // // // // // // // //
THE STATE OF OKLAHOMA,	
v.	) Case No. C-2007-50
Petitioner,	) )
CHRISTOPHER A. SIMMONS	) NOT FOR PUBLICATION

## C. JOHNSON, VICE-PRESIDING JUDGE:

MICHAEL S. RICHIE

FEB 1 4 2008

Petitioner was charged in Oklahoma County District Court with Unlawful Possession of a Handgun in both CF-2005-4940 and CF-2006-1377. Both cases were charged after former felony convictions. Petitioner entered a plea of guilty to the charges in each case and was sentenced to ten years imprisonment on each with the sentences to run concurrently. Petitioner filed a pro se Motion to Withdraw Guilty Plea. At the conclusion of a hearing on this motion, his request was denied. It is from this ruling that Petitioner appeals to this Court.

Petitioner raises the following proposition of error:

1. Mr. Simmons was denied effective assistance of counsel.

After thorough consideration of the proposition, and the entire record before us on appeal, including the original record, transcripts, and brief of Petitioner, we remand this case to the district court for a proper hearing on the motion to withdraw. Petitioner alleges in his sole proposition that he was denied his constitutional right to the effective assistance of counsel during the

hearing on the motion to withdraw his guilty plea because he was represented at the hearing by counsel with whom he had conflicting interests. Although Petitioner did not object to the conflict of interest at the hearing on the motion to withdraw, the record supports a finding that an actual conflict of interest adversely affected his lawyer's performance. Petitioner was denied his Sixth Amendment right to effective assistance of counsel at the hearing on the motion to withdraw as his defense counsel defended his own interests rather than those of his client. See Carey v. State, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118. Thus, this case must also be remanded to the district court for a proper hearing on the motion to withdraw in which Petitioner may be represented by conflict-free counsel.

## **DECISION**

The Petition for Writ of Certiorari is **GRANTED**, and the cause **REMANDED** to the district court for a proper hearing on the Motion to Withdraw Guilty Plea. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY THE HONORABLE JERRY D. BASS, DISTRICT JUDGE

APPEARANCES AT PLEA WITHDRAWAL HEARING

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## OPINION BY C. JOHNSON, V.PJ.

LUMPKIN, P.J.: CONCURS IN RESULTS

CHAPEL, J.: CONCURS A. JOHNSON, J.: CONCURS LEWIS, J.: CONCURS