

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB - 7 2022

JULIE LYNN BROWN,



JOHN D. HADDEN
CLERK

Petitioner,

NOT FOR PUBLICATION

v.

Case No. C-2021-218

THE STATE OF OKLAHOMA,

Respondent.

SUMMARY OPINION GRANTING CERTIORARI

ROWLAND, PRESIDING JUDGE:

Petitioner Julie Lynn Brown appeals the denial of her motions to withdraw no contest pleas in the District Court of Woodward County in Case Nos. CM-2020-133 and CM-2019-360. Brown entered a negotiated no contest plea in Case No. CM-2020-133 to one count of Outraging Public Decency in violation of 21 O.S.2011, § 22 and in Case No. CM-2019-360 to one count of Violation of a Protective Order in violation of 22 O.S.2011, § 60.6. The Honorable Erin N. Kirksey, Associate District Judge, accepted Brown's pleas and sentenced her to a one-year suspended sentence, a fine of \$100.00, and a \$50.00 victim compensation assessment in each case. Judge

Kirksey ordered the sentences to be served consecutively. Brown filed motions to withdraw her pleas on the basis that her pleas were not knowing and voluntary and the State filed a response. Conflict counsel was assigned and the district court set the motions for hearing. Prior to the hearing date, Brown, through conflict counsel, filed amended motions, raising ten reasons supporting withdrawal of her previously entered pleas. Brown failed to appear for the scheduled hearing and the district court denied her motions over the objection of conflict counsel. Brown raises one issue for review.

Brown claims in her sole proposition that her due process rights were violated when the district court denied her motions to withdraw pleas in her absence and that the district court abused its discretion in so ruling. The State concedes that Brown's claim has merit and joins in her request to reverse the order of the district court denying her motions and to remand the matter for a new hearing on her amended motions to withdraw pleas. We agree.

In *Dunn v. State*, 2018 OK CR 35, 434 P.3d 1, we explained:

The United States Supreme Court has held that under the Due Process Clause of the Fourteenth Amendment "a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of

the procedure.” Thus, we have recognized that “a defendant has a due process right to be present where his presence ‘bears, or may fairly be assumed to bear, a relation, reasonably substantial, to his opportunity to defend.’” “[T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.” However, “[t]he defendant’s presence is not required where such ‘presence would be useless, or the benefit but a shadow.’”

Id. 2018 OK CR 35, ¶ 7, 434 P.3d at 3 (citations omitted). The Court explicitly recognized that a criminal defendant has a right to be present at a hearing on a motion to withdraw plea. *Id.* 2018 OK CR 35, ¶ 8, 434 P.3d at 3. The right to be present may be waived and is not absolute. *Id.* 2018 OK CR 35, ¶ 11, 434 P.3d at 3. We, however, will not presume waiver from a silent record. *Id.*

The status conference court minute setting Brown’s motions to withdraw pleas for hearing listed only conflict counsel’s initials and did not indicate Brown’s presence. The court minute contains no file stamp from the District Court of Woodward County. No evidence in the record before us shows that Brown had notice of the hearing. As was the case in *Dunn*, Brown would have been uniquely poised to offer evidence on the bases she alleged for withdrawal and her absence at the hearing deprived the district court of an opportunity

to fully consider that evidence in ruling on her withdrawal motion. *Id.* 2018 OK CR 35, ¶ 9, 434 P.3d at 3. Because the record fails to show whether Brown's failure to appear was intentional or inadvertent and her presence key to creating a record for review, we find the district court abused its discretion in denying her motions in her absence. Accordingly, this case is remanded for a new hearing on Brown's motions to withdraw pleas.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. The district court's denial of Brown's motions to withdraw is **REVERSED** and the matter **REMANDED** for a new hearing on Brown's application to withdraw pleas. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF WOODWARD
COUNTY, THE HONORABLE ERIN N. KIRKSEY,
ASSOCIATE DISTRICT JUDGE**

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DISTRICT COURT**

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OPINION BY: ROWLAND, P.J.

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

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