

APR 18 2001

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ANTHONY DWAYNE GOSHAY

Petitioner,

v.

THE STATE OF OKLAHOMA

Respondent.

Case No. C-2000-35

SUMMARY OPINION

CHAPEL, JUDGE:

On October 7, 1999, in Comanche County District Court Case No. CRF-99-122, Anthony Dwayne Goshay pled guilty to Count I: Escape from County Jail in violation of 21 O.S.Supp.1994, § 443(a) and Count II: Assault on a Correctional Officer in violation of 21 O.S.1991, § 649. At sentencing on October 20, 1999, Goshay verbally attempted to withdraw his plea. The Honorable David B. Lewis denied Goshay's request, sentencing him to five (5) years imprisonment on Count I and three (3) years imprisonment on Count II.

On October 25, 1999, Goshay's attorney filed an application to withdraw his plea; Goshay followed with a *pro se* application to withdraw his plea on November 1, 1999. On December 28, 1999, a minute order was entered denying each of Goshay's motions. On August 25, 2000, this Court remanded Goshay's appeal to the district court to determine if Goshay was present at the hearing on his Application to Withdraw Plea. If not, the court was to hold a new hearing thereon.

The new hearing was held on October 2, 2000. At that hearing, the Honorable David B. Lewis denied Goshay's application to withdraw his plea. Goshay has perfected his appeal to this Court.

Goshay raises the following propositions of error on appeal:

- I. Petitioner's plea of no contest was entered as a result of coercion and, therefore, was not voluntary.
- II. Reversible error occurred when the trial court accepted Mr. Goshay's plea without informing him of the elements of each offense charged.
- III. Petitioner's convictions for escape and an assault on a correctional officer violates the prohibitions against double punishment and double jeopardy.

After thoroughly considering the entire appellate record presented, including the original record, transcripts, briefs and exhibits of the parties, we determine that reversal is required under the law and evidence. When Goshay entered his guilty plea under the plea agreement, the judge, the prosecutor, and his own counsel assured him that he could change his mind and reject it at sentencing, but that if he did, the prosecutor would seek to enhance his sentence with two previous felony convictions.¹ At sentencing, Goshay

¹ The relevant record follows:

Prosecutor: "Your honor, the State has made Mr. Goshay an offer in this case. I believe the offer is five years on the escape and three years on the assault on a corrections officer, to run consecutively with his other case. **If Mr. Goshay returns on the 20th and rejects that plea agreement**, the State of Oklahoma will be asking leave to amend the complaint again, adding his two felony convictions, which we have not agreed not to file for purposes of this plea. We simply did not want to be prevented from doing this if, in the meantime, Mr. Goshay changes his mind and wants to back out of this recommendation." (emphasis added.)

repeatedly requested to withdraw his plea. The district court nevertheless imposed the sentence recommended by the prosecutor and contained within the plea form that Goshay had signed.²

The plea transcript and Goshay's testimony at the Application to Withdraw hearing establish that Goshay's plea was entered subject to the conditions and risks stated above—namely, withdrawal at his option with a potentially increased sentence. Goshay did not receive the benefit of his bargain. As a result, his petition for certiorari should be granted.³

Decision

The writ of certiorari is **GRANTED**, and this matter is **REVERSED** and **REMANDED** for further proceedings not inconsistent with this opinion.

The Court: Okay. Mr. Herring, do you have any questions about that?

Mr. Herring: That is our understanding, pursuant to our discussions.

The Court: Mr. Goshay, you understand that as well?

The Defendant: Now I do.

The Court: It is a pretty straightforward proposition. **If you go along with you plea bargain, we sentence you at that time. If not, we run into a problem, all bets are off, and they will add the AFCs, and we will go forward from there.** (emphasis added.)

The Defendant: I understand that.

² (O.R. 33-36.)

³ See *Bailey v. State*, 730 P.2d 1212, 1213 (Okla. Cr. 1987) (defendant must be allowed to withdraw plea if agreement not followed). Here, the agreement was that Goshay could withdraw his plea at sentencing if he wanted. At sentencing, he attempted to exercise that option.

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OPINION BY: CHAPEL, J.

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

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