

ORIGINAL



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

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 30 2021

JOHN D. HADDEN
CLERK

**JEFFREY MONTRELL
ALEXANDER MCCLELLAN,**

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case No. C-2020-668

SUMMARY OPINION GRANTING CERTIORARI

ROWLAND, PRESIDING JUDGE:

Petitioner Jeffrey Montrell Alexander McClellan entered a guilty plea in the District Court of Comanche County, Case No. CF-2017-51, to Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies, in violation of 63 O.S.Supp.2015, § 2-415(B). The Honorable Gerald Neuwirth, District Judge, accepted McClellan's plea and sentenced him to twelve years imprisonment and a one thousand dollar fine. McClellan wrote the district court a letter expressing his intent to appeal based upon ineffective assistance of counsel. The district court accepted this letter as a timely application

to withdraw plea, which was subsequently denied. McClellan appeals the denial of his motion to withdraw plea raising the following issue:

- (1) whether he was denied the right to effective counsel.

McClellan claims he was deprived of conflict-free counsel at his plea withdrawal hearing. He requests this Court reverse the order of the district court denying his application to withdraw plea, and remand the case to the district court for a hearing on the motion to withdraw with the benefit of conflict-free counsel.¹

This Court has held that a defendant is entitled to the assistance of counsel on a motion to withdraw a guilty plea and at the evidentiary hearing on such a motion. *Randall v. State*, 1993 OK CR 47, ¶¶ 5-7, 861 P.2d 314, 316. In *Carey v. State*, 1995 OK CR 55, ¶¶ 5, 8, 902 P.2d 1116, 1118 (citing *Woods v. Georgia*, 450 U.S. 261, 271 (1981)), we further held that this right to counsel includes the right to the effective assistance of counsel, which “includes the correlative right to representation that is free from conflicts of interest.” “To prevail on an ineffective assistance of counsel claim

¹ On August 16, 2020, this Court issued an order directing a response to McClellan’s claim from the State. We gave the State ten days from the date of the order in which to file its response. The State has failed to follow this directive or to request an extension of time in which to do so. Accordingly, we address McClellan’s claim without response from the State.

based on a conflict of interest, a defendant who raised no objection at trial or a hearing on a motion to withdraw a guilty plea need not show prejudice, but ‘must demonstrate that an actual conflict of interest adversely affected his lawyer’s performance.’” *Carey*, 1995 OK CR 55, ¶ 10, 902 P.2d at 1118 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 349 (1980)).

A conflict of interest arises where counsel owes conflicting duties to the defendant and some other person or counsel’s own interests. *Allen v. State*, 1994 OK CR 30, ¶ 11, 874 P.2d 60, 63. An actual conflict exists where a defendant asserts that his attorney’s ineffectiveness or coercion resulted in an invalid plea and this same attorney represents the defendant at the hearing on the motion to withdraw. *See Carey*, 1995 OK CR 55, ¶ 10, 902 P.2d at 1118; Rule 1.7(a)(2), Oklahoma Rules of Professional Conduct, 5 O.S.2011, Ch. 1, App. 3-A. Consequently, when a defendant asserts that his plea is invalid due to ineffective assistance or attorney coercion, the trial court should automatically appoint new, conflict-free counsel on the motion to withdraw the plea.

In the present case, the McClellan filed a letter, treated by the district court as a pro se motion to withdraw his guilty plea, alleging

that his plea counsel was ineffective. McClellan was represented at the hearing on the motion to withdraw by the same counsel who represented him at the plea hearing. At the hearing on the motion to withdraw, defense counsel was present in court and McClellan appeared through video feed from the Comanche County Detention Center.² Defense counsel's only participation in the hearing was to state that he had nothing to say. While the trial court allowed McClellan to explain why he wanted to withdraw his guilty plea, McClellan proceeded at the hearing without defense counsel advocating his position and with the prosecutor advocating against him; McClellan had no counsel promoting his interests, which were in actual conflict with the interests of plea counsel.

McClellan was entitled to effective and conflict-free representation. Accordingly, this case is remanded for a new hearing on McClellan's motion to withdraw guilty plea and the trial court is ordered to appoint new, conflict-free counsel to represent McClellan on his motion to withdraw his guilty plea and on the evidentiary hearing on this motion.

² McClellan was not physically present in court due to Covid-19 protocol.

DECISION

The Petition for a Writ of Certiorari is **GRANTED**. The Judgment and Sentence of the district court is **REVERSED** and the matter **REMANDED** for a new hearing on McClellan's application to withdraw plea with separate, conflict-free counsel. Pursuant to Rule 3.15, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT
OF COMANCHE COUNTY
THE HONORABLE GERALD NEUWIRTH, DISTRICT JUDGE**

**APPEARANCES IN THE
DISTRICT COURT**

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OPINION BY: ROWLAND, P.J.

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