

ORIGINAL



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

JUN - 9 2022

RAHEEM TRAVON WALKER,

JOHN D. HADDEN
CLERK

Petitioner,

NOT FOR PUBLICATION

v.

Case No. C-2020-691

THE STATE OF OKLAHOMA,

Respondent.

SUMMARY OPINION GRANTING CERTIORARI

ROWLAND, PRESIDING JUDGE:

Petitioner Raheen Travon Walker entered a negotiated guilty plea in the District Court of Muskogee County, to the crime of Assault and Battery on Employee of Juvenile Detention Facility in violation of 21 O.S.2011, § 650.8, in Case No. YO-2019-1 (Counts 1, 2, and 3), and in Case No. YO-2019-3 (Count 1). Pursuant to the plea agreement, Walker was to be sentenced under the Delayed Sentencing Program for Young Adults. Accordingly, Judge Bret Smith, District Judge, ordered an offender accountability plan for the delayed sentencing program. The district court was advised soon thereafter, however, that Walker was not eligible for the Delayed Sentencing Program because he was seventeen at the time he entered

his pleas and because he had a juvenile adjudication for robbery by two or more persons.¹ Consequently, the district court set the matter for sentencing. Walker was sentence in both YO-2019-1 and YO-2019-3 to ninety days in the county jail and two years deferred sentencing on each count. Each ninety day term assessed in YO-2019-1 was ordered to be served consecutively and the deferred sentences were to run concurrently with each other. The sentences assessed in YO-2019-1 were ordered to run concurrently with that assessed in YO-2019-3.²

On March 3, 2020, the State filed applications to accelerate Walker's deferred sentences. After a hearing on the applications, the

¹ Title 22 O.S.Supp.2018, § 996.1(22) provides:

As used in the Delayed Sentencing Program for Young Adults:
"Offender" means any adult eighteen (18) through twenty-five (25) years of age as of the date of a verdict of guilty or a plea of guilty or nolo contendere for a nonviolent felony offense or a juvenile who has been certified to stand trial as an adult for a nonviolent felony offense, who has no charges pending for a violent offense and who has not been sentenced, or adjudicated as a juvenile delinquent or youthful offender, of:

...

22. Robbery by two (2) or more persons as defined by Section 800 of Title 21 of the Oklahoma Statutes. . . .

² The sentencing proceeding was not transcribed. The setting of the sentencing hearing and the sentences imposed are noted in court minutes included within the original record in YO-2019-1.

district court accelerated the deferred sentences and ordered Walker to serve two years imprisonment on each count in each case. The court ordered the sentences in YO-2019-1 be served consecutively to each other and concurrently with the two year sentence imposed in YO-2019-3.

Walker filed a timely motion to withdraw his guilty plea. After appointment of conflict counsel, a hearing was held on the motion to withdraw. This motion was denied by the Honorable Bret Smith, District Judge. Walker appeals raising the following issues:

- (1) whether his plea was entered knowingly and intelligently;
- (2) whether the trial court erred in denying his motion to withdraw because a plea form was not filed;
- (3) whether the trial court erred in denying his motion to withdraw because he did not receive the sentence he negotiated; and
- (4) whether he was denied effective assistance of plea and withdrawal counsel.

Because we find that relief is required, we address only the allegation of error requiring relief. Walker argues the district court erred by denying his motion to withdraw his guilty plea because he did not receive the promised benefit of his plea bargain. “[P]lea-bargaining is an essential component of the administration of

justice.” *Jiminez v. State*, 2006 OK CR 43, ¶ 6, 144 P.3d 903, 905 (quoting *Gray v. State*, 1982 OK CR 137, ¶¶ 13-14, 650 P.2d 880, 883). If a defendant enters a plea in expectation of some agreed sentence, or predicated on a particular agreed condition, that promise should be kept. *Santobello v. New York*, 404 U.S. 257, 262 (1971) (“circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled”). See also *Couch v. State*, 1991 OK CR 67, ¶ 6, 814 P.2d 1045, 1047 (defendant must be allowed to withdraw plea where trial court accepted plea agreement but imposed different sentence).

Walker did not allege this specific claim he now raises on appeal in either his application to withdraw plea or in his petition for writ of certiorari. Thus, it was not litigated below, and under *Weeks v. State*, 2015 OK CR 16, ¶¶ 27- 29, 362 P.3d 650, 657 and Rules 4.2(B) & 4.3(C)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the claim is technically waived. However, Walker also argues he is entitled to relief based upon ineffective assistance

of counsel. He faults conflict counsel for waiving appellate review of this claim by not filing a new or supplemental motion to withdraw guilty plea alleging that he had not received the benefit of his bargain.

To prevail, Walker must show both that counsel's performance was deficient and that the deficient performance resulted in prejudice to his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Strickland prejudice in the plea withdrawal context is a reasonable probability that, but for counsel's errors, the trial court would have granted the motion." *Champion v. State*, 2020 OK CR 8, ¶ 11, 461 P.3d 952, 955. As with any claim of ineffective assistance of counsel, this Court need not determine whether counsel's performance was deficient if the petitioner was not prejudiced by counsel's actions. See *Malone v. State*, 2013 OK CR 1, ¶ 16, 293 P.3d 198, 207.

Walker did not received the benefit for which he had bargained.³ He entered a plea with the understanding that he was "subject to the Delayed Sentencing Program for Young Adults" and would be committed to it. After Walker was deemed ineligible for that program,

³ Nor does the record indicate that Walker renegotiated his plea before sentencing as a court minute in record notes that the State objected to the sentence imposed.

his sentencing was deferred for the maximum length of time allowed on each count. See 21 O.S.2011, § 650.8; 21 O.S.2011, § 9. Additionally, he did not receive other benefits associated with admission into the delayed sentencing program. Walker's negotiated plea agreement was breached, and this breach was both material and substantial. Had defense counsel raised this error below allowing it to be litigated at the hearing on the motion to withdraw, Walker would have been entitled to relief and allowed to withdraw his guilty plea. Walker has shown both deficient performance and prejudice and the proper remedy is to grant the petition, allow Walker to withdraw his plea, and place both parties in the same position they were prior to the entry of the plea. *Couch*, 1991 OK CR 67, ¶ 7, 814 P.2d at 1047.

DECISION

The Petition for a Writ of Certiorari is **GRANTED** and the case is **REMANDED** to the District Court of Muskogee County to allow Walker to withdraw his pleas and proceed to trial on all counts. 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 MUSKOGEE
COUNTY, THE HONORABLE BRET SMITH,
DISTRICT JUDGE**

**APPEARANCES ON MOTION TO
WITHDRAW PLEA**

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OPINION BY: ROWLAND, P.J.

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

LUMPKIN, JUDGE: DISSENTING

I dissent to this decision as I find Respondent has waived his claim. Petitioner contends in Proposition II that no “completed plea form” is in the record which shows that Petitioner entered a plea to a deferred sentence. This claim is waived because mention of this contention is wholly absent from his motion to withdraw plea or his petition for writ of *certiorari*. See Rules 4.2(B) and 4.3(C)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022). Notwithstanding that the claim is waived, he is also mistaken as the plea forms are filed in both cases reflecting Petitioner’s plea which occurred on May 7, 2019. As clearly shown in the record, the hearing which occurred on June 25, 2019, and which resulted in Petitioner’s deferred sentences, was a sentencing hearing based upon Petitioner’s plea which occurred May 7, 2019. Moreover, because the trial court determines what sentence to impose after successful completion of the RID Program pursuant to 22 O.S.Supp.2018, § 996.3(A), the plea form correctly did not include anything other than commitment to the RID Program.

The opinion finds this claim is saved from waiver because Petitioner alleged his withdrawal counsel was ineffective for failing to amend the motion to withdraw to allege “that he had not received the benefit of his bargain.” But that is not what Petitioner alleged in his brief. The exact claim is: “[c]ounsel’s failure to recognize there was not a proper plea form for the **second plea** was unreasonable.” Petitioner maintains that failing to raise the absence of a “proper plea form” is counsel’s failure. Transforming this claim into the one the opinion addresses is unfounded and requires too much interpretation. Moreover, as fully shown above, the record contains a “proper plea form” and there was only one plea. Thus, Petitioner’s ineffective assistance claim is without merit.

Although Petitioner’s claim is waived, the benefit of the bargain analysis in the opinion warrants discussion. It is true that Petitioner did not go to the RID Program. However, by receiving the deferred sentences, he received punishment which was identical to what he could have received had he successfully completed RID. The ultimate outcome of youthful offender cases involving RID is left to the trial court as shown in Section 996.3. Pursuant to Section 996.3, the trial court has several options regarding sentencing after a defendant

successfully completes RID, including: deferring judgment pursuant to the provisions of Section 991c, as found in Section 996.3(A)(1); or sentencing the offender to “any sentence provided by law in the custody of DOC” as found in Section 996.3(A)(2). Of course, the most serendipitous option is that found in Section 996.3(A)(5), which is dismissal of the case. Given Petitioner’s lengthy juvenile record, it is highly doubtful that the trial court would have chosen this option.

The trial court gave Petitioner every opportunity to succeed, even releasing him back to community sentencing after the State filed its first application to accelerate his deferred sentences, thereby giving him an opportunity to become compliant with the terms of his community sentencing. Petitioner failed to avail himself of this opportunity and instead committed new crimes. Had Petitioner successfully completed his deferred sentences, he would have no adult criminal record which was the outcome sought to be achieved by trying to have him admitted to the RID Program in the first place.

I also point out that a defendant must first meet the qualifications for admission to the RID Program and in this case Petitioner did not qualify. The Court cannot mandate that DOC admit

a defendant to the RID Program when he does not meet its qualifications.

I am authorized to state that Vice Presiding Judge Hudson joins me in this separate writing.