

ORIGINAL



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

RONALD FITZGERALD WILLIAMS,) NOT FOR PUBLICATION
)
Petitioner,)
v.) **FILED**
THE STATE OF OKLAHOMA) IN COURT OF CRIMINAL APPEALS
Respondent.) STATE OF OKLAHOMA Case No. C-2018-1167
JAN 23 2020
JOHN D. HADDEN
CLERK

**SUMMARY OPINION GRANTING CERTIORARI AND
REMANDING FOR A NEW HEARING ON
THE MOTION TO WITHDRAW PLEA**

LEWIS, PRESIDING JUDGE:

Ronald Fitzgerald Williams, Petitioner, entered a negotiated plea of guilty to Count 1, aggravated trafficking in illegal drugs, Methamphetamine, in violation of 63 O.S.Supp.2015, § 2-415(C); Count 2, unlawful possession of controlled drug with intent to distribute, marijuana, in violation of 63 O.S.Supp.2012, § 2-401(B)(2); Count 3, unlawful possession of drug paraphernalia, a misdemeanor, in violation of 63 O.S.2011, § 2-405; Count 4, failure to yield for emergency vehicle, a misdemeanor, in violation of 47 O.S.2011, § 11-405; Count 5, speeding in excess of lawful maximum limit, a misdemeanor, in violation of 47 O.S.Supp.2016, § 11-801(B);

and Count 6, failure to maintain insurance or security, a misdemeanor, in violation of 47 O.S.Supp.2016, § 7-606, in the District Court of Comanche County, Case No. CF-2017-662. The Honorable Irma J. Newburn, District Judge, accepted the plea, found Petitioner guilty after two or more former convictions, and sentenced him pursuant to the agreement to twenty (20) years and a \$50,000.00 fine (\$49,000.00 suspended) on Count 1, twenty (20) years and a \$1,000.00 fine on Count 2, one (1) year and a \$500.00 fine on Count 3, and \$10.00 fines on Counts 4 through 6, all to be served concurrently, with credit for time served.¹ Petitioner filed a motion to withdraw his guilty plea, which the trial court denied. Petitioner now seeks the writ of certiorari in the following propositions of error:

1. Having been substantially misadvised of his appellate rights, Petitioner's guilty plea was not knowing, intelligent and voluntary;
2. Petitioner was denied due process, as the evidentiary hearing on his motion to withdraw plea was held in his absence without a waiver thereof;
3. Petitioner was denied the effective assistance of counsel in violation of his rights under the 6th and 14th Amendments to the United States Constitution and Art. II, §§ 7 and 20 of the Oklahoma Constitution.

¹Appellant must serve 85% of his sentence on Count 1 before being eligible for consideration for parole. 21 O.S.Supp.2015, § 13.1(20).

Generally, certiorari review is limited to whether the plea was entered voluntarily and intelligently before a court of competent jurisdiction, *Weeks v. State*, 2015 OK CR 16, ¶ 11, 362 P.3d 650, 654; whether the sentence is excessive, *Whitaker v. State*, 2015 OK CR 1, ¶ 9, 341 P.3d 87, 90; whether counsel was constitutionally effective at either the plea hearing or the withdrawal hearing, *Lozoya v. State*, 1996 OK CR 55, 932 P.2d 22; and whether the State has the power to prosecute the defendant at all, *Weeks*, 2015 OK CR 16, ¶ 12, 362 P.3d at 654.

In this case, however, the issue raised in Proposition Two prompted this Court to direct the State to respond to Petitioner's brief in this Certiorari appeal. The State filed its response on November 12, 2019. In its response brief, the State concurs that the record does not reflect that Williams was present at his withdraw hearing; the State concedes that this constitutes error.

Due process requires that a defendant be present at the evidentiary hearing on a motion to withdraw guilty plea. *Dunn v. State*, 2018 OK CR 35, ¶ 12, 434 P.3d 1, 3. This Court will find a due process violation unless the record establishes a petitioner had waived his right to be present at the hearing. *Id.* Waiver will not be

found from a silent record. *Id.*, 2018 OK CR 35, ¶ 11, 434 P.3d at 3. Here there is no record indicating that Petitioner was present at the hearing. In such case, the proper remedy is to remand the case for a proper hearing on the motion to withdraw plea. *Id.*, 2018 OK CR 35, ¶ 14, 434 P.3d at 4.

This Court declines to review the remaining claims as Petitioner's presence, or valid waiver of presence, at the withdraw hearing is essential in resolving these issues at the trial court level. *Id.*

DECISION

The petition for the writ of certiorari is **GRANTED**. The trial court's order denying Petitioner's motion to withdraw plea is **REVERSED**, and this cause is **REMANDED** to the District Court for a new hearing on the motion to withdraw plea. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY THE HONORABLE IRMA J. NEWBURN, DISTRICT JUDGE

APPEARANCES AT TRIAL

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OPINION BY: LEWIS, P.J.
KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur