

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

GILBERT PAZ,)
)
 Petitioner,)
 vs.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

No. C-2014-584

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 6 2015

SUMMARY OPINION ON CERTIORARI

MICHAEL S. RICHIE
CLERK

SMITH, PRESIDING JUDGE:

On April 7, 2014, Petitioner, Gilbert Paz, entered negotiated guilty pleas to the following crimes, all After Conviction of a Felony, in Cleveland County District Court Case No. CF-2012-2150:

- Count 1, First Degree Felony Murder (21 O.S.2011, § 701.7(B))
- Count 2, Shooting with Intent to Kill (21 O.S.2011, § 652(A))
- Count 3, Conspiracy (21 O.S.2011, § 421)
- Count 4, Attempted Robbery with a Firearm (21 O.S.2011, § 801)
- Count 5, Possession of a Firearm AFC (21 O.S.2011, § 1283(A))¹

When the parties appeared for formal sentencing on May 28, Petitioner's counsel informed the court of Petitioner's desire to withdraw his pleas. The court continued the sentencing hearing to give Petitioner time to file a written motion to withdraw plea, and to seek new counsel if necessary. On June 6, a motion to withdraw plea was filed by Petitioner's original counsel, alleging that the pleas were entered "without deliberation and through ignorance and inadvertence." On June 23, 2014, Petitioner told the court he had been trying (with the help of his

¹ The charges stem from a burglary and shooting incident in September 2012. Jonathan Patton was fatally shot in the head, and Chad Martin was wounded, when intruders broke into a trailer home in which they were staying. Three people, including Petitioner, were charged in connection with the incident.

family) to hire a new lawyer, apparently without success. Petitioner's original counsel expressed his ethical discomfort at advocating Petitioner's request to withdraw his pleas, having counseled him in accepting the plea agreement in the first place. The court administered the oath to Petitioner and let him explain, *pro se*, why he wanted to withdraw his pleas. The court denied the request, then received victim-impact evidence and sentenced Petitioner in accordance with his plea agreement: life imprisonment, with all but 38 years suspended, on Counts 1 through 4, and ten years imprisonment on Count 5, with all terms running concurrently. Petitioner timely sought a certiorari appeal from the district court's ruling. The State was directed to file a response, which was filed May 18, 2015. Petitioner filed a reply brief June 5, 2015.²

Paz raises five propositions of error in support of his petition:

PROPOSITION I. THE TRIAL COURT ABUSED ITS DISCRETION BY PROVIDING THE EQUIVALENT OF LEGAL ADVICE TO MR. PAZ AND PARTICIPATING IN PLEA NEGOTIATIONS.

PROPOSITION II. MR. PAZ'S PLEA WAS A PRODUCT OF MISUNDERSTANDING AND CONFUSION AND WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTERED.

PROPOSITION III. MR. PAZ WAS DENIED HIS CONSTITUTIONAL RIGHT TO COUNSEL DURING CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS AGAINST HIM.

PROPOSITION IV. MR. PAZ WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

PROPOSITION V. THE ERRORS IN THIS CASE CUMULATIVELY DEPRIVED MR. PAZ OF A FAIR HEARING AND DUE PROCESS OF LAW.

After thorough consideration of the Petitioner's claims, and the entire record before us on appeal, including the original record, transcripts, and briefs of the

² Petitioner's "Motion to Amend Brief of Petitioner to Include Unpublished Opinion Attachments," filed December 16, 2014, is hereby **GRANTED**.

parties, we conclude that only Proposition III requires resolution at this time. Petitioner claims, and the State concedes, that he was entitled to the effective assistance of counsel in his quest to withdraw his guilty pleas, and that he did not receive it. See *Randall v. State*, 1993 OK CR 47, ¶¶ 3-9, 861 P.2d 314, 315-16; *Carey v. State*, 1995 OK CR 55, ¶ 8, 902 P.2d 1116, 1118; *Wood v. Georgia*, 450 U.S. 261, 271, 101 S.Ct. 1097, 1103, 67 L.Ed.2d 220 (1981). The State contends that this omission was harmless beyond a reasonable doubt, but we cannot agree. Petitioner claimed his pleas were involuntary; while we express no opinion as to the possible merits of that claim, we decline to hold, on the record before us, that the lack of counsel was harmless. *Randall*, 1993 OK CR 47, ¶ 7, 861 P.2d at 316.

DECISION

The District Court's denial of Petitioner's Motion to Withdraw Plea is **VACATED**, and the case is **REMANDED** to the District Court for further proceedings not inconsistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE TRACY SCHUMACHER, DISTRICT JUDGE

**ATTORNEYS AT PLEA HEARING
AND HEARING ON
MOTION TO WITHDRAW PLEA**

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OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR