

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KALUB LEBRYON LEE WILLIAMS,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case No. C-2015-1054

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 28 2016

MICHAEL S. RICHIE
CLERK

OPINION DENYING CERTIORARI

LUMPKIN, VICE PRESIDING JUDGE:

Petitioner, Kalub Lebryon Lee Williams, was charged by Information in the District Court of Washington County, Case No. CF-2014-444, with First Degree Rape (21 O.S.2011 § 1114(A)(1)). On September 22, 2015, Petitioner entered a negotiated guilty plea before the Honorable Curtis L. DeLapp, District Judge. The District Court accepted Petitioner's plea and sentenced Petitioner to imprisonment for twenty-five (25) years with all but the first fifteen (15) years suspended, supervised probation, a \$1,000.00 fine, \$500.00 Victim's Compensation Assessment, \$250.00 court-appointed attorney fee, and all incarceration fees and costs. (O.R. 105-07).¹

On September 24, 2015, Petitioner filed his *pro se* pleading seeking to withdraw his guilty plea and requesting the appointment of new counsel. On September 28, 2015, the District Court appointed conflict counsel to represent Petitioner. On November 13, 2015, the District Court held an evidentiary hearing

¹ Petitioner was advised that he would be required to serve 85% of any sentence for the charged offense prior to becoming eligible for consideration for parole. See 21 O.S.2011, § 13.1.

in the matter and on November 17, 2015, the District Court denied Petitioner's application. Petitioner timely filed his Notice of Intent to Appeal seeking to appeal the denial of his application to withdraw guilty plea.

Petitioner raises the following propositions of error in support of his appeal.

- I. It was plain error and an abuse of the trial court's discretion to deny Petitioner's application to withdraw his guilty plea because Petitioner was not advised of the correct range of punishment for the crime charged and did not have adequate time to form a decision after an attempt to correct the range was made.
- II. Petitioner was not fully advised of his constitutional rights he was required to waive in order to show a knowing, intelligent and voluntary plea of guilt.
- III. The trial court abused its discretion when it failed to consider the statutory factors in assessing Petitioner's Victim Compensation Assessment.

After thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we affirm the trial court's ruling.

The decision to allow the withdrawal of a plea is within the sound discretion of the trial court and we will not interfere unless we find an abuse of discretion." *Carpenter v. State*, 1996 OK CR 56, ¶ 40, 929 P.2d 988, 998. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

In Proposition One, Petitioner contends that his plea was not voluntarily and intelligently entered. He argues that he was misadvised as to the range of punishment for the charged offense.

Our primary concern in evaluating the validity of a guilty plea is whether the plea was entered voluntarily and intelligently. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 223 L.Ed.2d 274 (1969); *Ocampo v. State*, 1989 OK CR 38, ¶ 3, 78 P.2d 920, 921. The defendant must be advised of all constitutional rights he relinquishes with his plea. *King v. State*, 1976 OK CR 103, ¶ 11, 553 P.2d 529, 534-35. He must also be advised of "[t]he nature and consequences of such plea, including the minimum and maximum punishment provided by law for the crime of which he stands charged." *Id.*

Reviewing the record in the present case, we find that the District Court's determination that Petitioner's plea was knowingly and voluntarily entered is not clearly against the logic and effect of the facts presented. Although Petitioner was misadvised as to the applicable range of punishment at the time of his plea, he was correctly advised as to the range of punishment later that afternoon, had the opportunity to speak with counsel concerning the change of circumstances and have her advice, and was afforded the opportunity to withdraw his plea. Petitioner acknowledged that he understood the actual range of punishment and affirmed his intention to maintain his guilty plea to the District Court.

Claiming that death is the actual maximum punishment for First Degree Rape, Petitioner argues that he was never properly advised as to the actual range

of punishment. The statute which sets out the range of punishment for Rape in the First Degree still lists death as a possible punishment for the offense. 21 O.S.2011, § 1115. However, the United States Supreme Court has determined that the Eighth Amendment prohibits the punishment of death for the rape of a child. *Sanchez v. State*, 2009 OK CR 31, ¶ 92, 223 P.3d 980, 1010, *citing Kennedy v. Louisiana*, 554 U.S. 407, 412-13, 128 S. Ct. 2641, 2646, 171 L. Ed. 2d 525 (2008). Therefore, we find that Appellant was properly advised as to the applicable range of punishment when he was brought back to the courtroom.

Petitioner further argues that he was not provided adequate time to form the decision to continue with his plea after he was initially misadvised as to the range of punishment for the charged offense. This Court has not prescribed a specific time period which must be provided to a defendant to cause his or her plea to be knowing and voluntary. Instead, the standard for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.ED.2d 162 (1970). Based upon the record, we find that the District Court's determination that Petitioner's plea represented a voluntary and intelligent choice among the alternative courses of action open to him was not clearly against the logic and effect of the facts presented.

Accordingly, we find that Petitioner has not shown that the District Court abused its discretion when it denied his application to withdraw guilty plea. Proposition One is denied.

In Proposition Two, Petitioner contends that he was not fully advised of the constitutional rights he waived when he entered his guilty plea. In Proposition Three, Petitioner challenges the District Court's assessment of the Victim Compensation Assessment.

Petitioner did not raise these claims in his application to withdraw guilty plea, at the hearing held on his application, or in his Petition for Writ of Certiorari. As such, we find that he has waived appellate review of the claims. *Weeks v. State*, 2015 OK CR 16, ¶ 27, 362 P.3d 650, 657; *Bush v. State*, 2012 OK CR 9, ¶ 28, 280 P.3d 337, 345, *Walker v. State*, 1998 OK CR 14, ¶ 3, 953 P.2d 354, 355; Rule 4.2(B), Rule 4.3, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015).

DECISION

Accordingly, the trial court's order denying Petitioner's application to withdraw guilty plea is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY
THE HONORABLE CURTIS L. DELAPP, DISTRICT JUDGE

APPEARANCES AT TRIAL

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NO RESPONSE NECESSARY

OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: Concur
C. JOHNSON, J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur