IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ELLIOT JAMES OAKLEY,	)	
	)	
Petitioner,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. C-2016-451**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

OPINION DENYING CERTIORARI

HUDSON, JUDGE:

On August 20, 2015, Petitioner Elliot James Oakley entered a blind guilty plea to Murder in the First Degree, in violation of 21 O.S.Supp.2012, § 701.7(A), in the District Court of Seminole County, Case No. CF-2014-254, before the Honorable George Butner, District Judge.[1] [2] Sentencing was delayed pending the completion and filing of a Pre-Sentence Investigation Report. On August 28, 2015, Petitioner filed an application to withdraw his guilty plea alleging that his plea "was entered through inadvertence, ignorance, mistake, or coercion[.]" Conflict counsel was appointed.

The hearing on Petitioner's motion to withdraw was continued for several months while awaiting preparation of the plea transcript by the court reporter. During this period, the State filed a brief in opposition to Petitioner's motion to withdraw. On December 22, 2015, Petitioner formally withdrew his application

---

1 At the time of Petitioner's plea, the State dismissed a separate count of Conspiracy to Commit a Felony.

2 As part of his plea, Petitioner admitted the State's allegations in the Supplemental Information that he was previously convicted of Trafficking in Illegal Drugs—Cocaine Base in the District Court of Love County, Case No. CF-2008-121.

to withdraw guilty plea and the matter was continued for sentencing.[3] On April 26, 2016, Petitioner appeared for sentencing. After hearing argument from both parties, Judge Butner sentenced Petitioner to life without the possibility of parole. On May 2, 2016, Petitioner, through conflict counsel, filed a motion to withdraw guilty plea. After holding a hearing on the matter during which Petitioner, plea counsel and the lead detective on the case testified, Judge Butner denied Petitioner's application to withdraw his guilty plea. This appeal ensued.

BACKGROUND

In this case, Petitioner pled guilty to the first degree murder of Tyree McFadden. The State presented evidence at preliminary hearing showing Petitioner shot McFadden on June 28, 2014, during an argument with Petitioner's brother, Tony Oakley, outside a Seminole convenience store. According to an eyewitness, Jessica Johnson, the confrontation between Tony Oakley and McFadden was occurring when Petitioner pulled up in a car and shot McFadden in the chest with a single bullet fired from a handgun. McFadden ran away from the convenience store, was taken to a local hospital and subsequently died of his injuries. Another eyewitness, Veronica Harrison, placed Petitioner at the scene and testified he was fighting with McFadden.

---

[3] With the consent of Judge Butner, the probation and parole officer tasked with preparing Petitioner's pre-sentence investigation report suspended work on the matter pending resolution of the motion to withdraw guilty plea. After the application was withdrawn by Petitioner, sentencing was continued to allow preparation of the pre-sentence investigation report.

However, she did not see Petitioner with a gun. Nor did she see Petitioner actually shoot the victim.

On July 17, 2014, Petitioner was charged by information with first degree murder for McFadden's killing. The record shows that counsel for both parties announced ready for jury trial during an August 20, 2015, pre-trial conference.[4] Later that afternoon, however, Petitioner entered a blind guilty plea to the first degree murder charge. Petitioner acknowledged at the start of the plea colloquy that he had been discussing with counsel the prospect of entering a plea for at least four (4) hours since the conclusion of the pre-trial hearing.

Petitioner, through counsel, filled out the standard plea form prescribed by our Rules.[5] Petitioner acknowledged on the plea form, *inter alia*, the first degree murder charge he faced along with the range of punishment for that crime, i.e., life or life without parole. Petitioner further indicated he 1) understood the nature and consequences of the proceedings; 2) understood his trial rights; 3) was pleading guilty of his own free will, without any coercion or compulsion of any kind; 4) had not been "forced, abused, mistreated, threatened or promised anything by anyone" to enter his plea; and 5) understood that the trial court could sentence him within the statutory range of punishment. To support his guilty plea, Petitioner stipulated both to the probable cause affidavit filed in support of the information and the evidence

---

4 Petitioner's jury trial was scheduled to begin on September 8, 2015.

5 *See* Rule 4.1, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015) (mandating use of Form 13.10 Uniform Plea of Guilty—Summary of Facts form for pleas).

adduced at preliminary hearing. In response to Question No. 21 on the plea form, Petitioner circled "Yes" to indicate that he believed his lawyer had effectively assisted him in the case and was satisfied with counsel's advice.

Petitioner signed the plea form, along with plea counsel. Petitioner checked the box indicating his attorney completed the form and went over it with him and that Petitioner understood the contents of the plea form and agreed with the answers on it.

During the plea hearing, the trial court inquired of Petitioner's ability to understand the proceedings and made a specific finding that Petitioner was competent "in all respects." Petitioner acknowledged, *inter alia*, the dismissal by the State of the Count 2 charge of conspiracy to commit a felony; the fact of his prior felony conviction for trafficking in illegal drugs; and that the range of punishment was life or life without parole. The following exchange then occurred between the trial court and Petitioner:

> Q And since I indicated or you indicated that you completed the 12th grade you have in fact read this pink form, this Plea of Guilty and Summary of Facts. Do you have any questions about it?
>
> A No, sir.
>
> Q The answers set forth herein are your answers; is that correct?
>
> A Yes, sir.
>
> Q Now, you have talked over the charges with your lawyer you advised him regarding any defense you may have to the charges. You had his advice in the matter; is that correct?
>
> A Yes, sir.

Q And do you believe that [plea counsel] has assisted you in this case and represented you and are you satisfied with his advice?

A Yes, sir.

Q Now you stand on a plea of not guilty. Do you wish to give up your right to a jury trial which is scheduled the 8th, give up all of the other rights that you have gone over in this form. And is that correct you wish to change your plea from not guilty to guilty and give up your right to jury trial and all of your Constitutional Rights?

A Yes.

Q Now, this is what is commonly called a, "blind plea" which means that you will be sentenced in accordance with what the Court decides.

A Yes, sir.

Q Is that correct?

A Yes.

Q There is no agreement as to term?

A No, sir.

Q Now what is your plea to the charge of Murder in the First Degree?

A Guilty.

Q And you stipulate to the Affidavit for the issuance of the Warrant as well as the Preliminary Hearing which I have in fact read.

A Yes, sir.

Q That Preliminary Hearing is sufficient for the findings of fact and the basis for your plea. Has anyone by force, abuse, mistreatment, threats, or promises done anything to have you enter your plea?

A No, sir.

Q You do this of your own free will without any coercions or compulsion of any kind; is that correct?

A Yes, sir.

(Plea Tr. 6-8). The trial court accepted Petitioner's guilty plea and continued the matter for sentencing at a later date.

At the hearing on the motion to withdraw, Petitioner acknowledged his answers on the plea form, including stating 1) that he had not been forced, abused, mistreated, threatened or promised anything by anyone in exchange for entering the plea; and 2) that he pled guilty without any coercion or compulsion of any kind. Petitioner admitted talking to plea counsel before entering the plea. Petitioner said he explained to plea counsel what happened the night of the killing and counsel responded by saying if he took it to trial, Petitioner was "going to lose period."

Petitioner discussed his concerns with plea counsel about entering the plea, specifically, "[g]etting a life sentence and everything." According to Petitioner, plea counsel told him that he "would be able to get a suspended sentence and everything" and that "the best way to go is through the Judge instead of taking it to trial. That was the best thing for me." Petitioner acknowledged discussing his options with plea counsel but that they convinced him that taking a blind plea was the best option and that Petitioner "really shouldn't try to push it to trial." This, in turn, made Petitioner feel "down and out" and he accepted plea counsel's advice because he felt this was the best

thing for Petitioner. Petitioner testified that he now wants to withdraw his guilty plea because he "did not do it. And plus, I feel it was a mistake on my behalf to plead guilty."

Petitioner explained that he entered his guilty plea because he was trying to protect his brother (and co-defendant) Tony Oakley. Petitioner testified that Branon Bowen, a detective with the Seminole Police Department, told him if he did not plead guilty to the murder charge, that Bowen would "make sure my brother get [sic] plenty of time." This, in turn, caused Petitioner to feel pressure to plead guilty. Petitioner testified that he told plea counsel about Bowen's threat but "they kind of blew it over and it was like he wasn't worried about it." In response, Petitioner entered his guilty plea.

Petitioner acknowledged that his testimony at the plea hearing was different from his testimony at the hearing on the motion to withdraw. Petitioner stated that he provided false statements under penalty of perjury when entering his guilty plea. Petitioner denied that his attorneys ever told him to lie to the trial court. To summarize his reasons for wanting to withdraw his guilty plea, petitioner stated the following:

> I feel like I should have had an option to withdraw my plea. Because for one I feel I was forced and pressured by basically my attorney, also Branon Bowen. And at that time I really wasn't thinking straight. Just thinking that I was trying to help out my brother and help him anyway that I can. Just give me a chance, I guess.

(5/27/2016 Tr. 17).

Petitioner acknowledged on cross-examination that he withdrew his initial application to withdraw plea to see what kind of sentence he would end up with and, even at that point, Petitioner was hopeful he might receive a split sentence. Petitioner admitted being dismayed and disappointed when the trial court instead sentenced him to life without parole. Petitioner nonetheless testified he "already had it in [his] mind" to file the application to withdraw plea "no matter what the Judge said". Petitioner admitted that the State's case against his brother, Tony Oakley, was dismissed by the district court after Petitioner entered his guilty plea. Petitioner too acknowledged being given the opportunity to provide truthful testimony against anyone else involved in the murder in exchange for avoiding the maximum sentence, i.e., life without parole. Instead, Petitioner rejected that offer and entered a blind plea.

When asked what defense he intended to present at a jury trial, Petitioner claimed he could prove an alibi. However, Petitioner admitted discussing this potential alibi defense with plea counsel. Petitioner identified a friend named "Gato" who moved to California as being a witness who could corroborate Petitioner's alibi. Petitioner testified that he told plea counsel about "Gato" but was unable to provide a last name or forwarding address for this person. Petitioner claimed that his little brother had contacted "Gato" several months earlier by telephone and that contact information for this person was "a phone call away". Petitioner also claimed that Veronica Harrison—one of the witnesses who placed Petitioner at the crime scene—could corroborate his alibi. Petitioner explained that Harrison lied about him being

at the crime scene in order to stay out of jail herself. Petitioner claimed Jessica Johnson, the eyewitness who identified him as the shooter, also lied in her testimony. Petitioner denied being at the crime scene.

The State called Detective Branon Bowen as a witness. Det. Bowen testified that he took buccal swabs from both Petitioner and his brother at the county jail for DNA testing in the case. During this process, Det. Bowen told Petitioner that maybe he and his brother's attorney should talk if Petitioner had testimony that would clear his brother of the crime charged. Det. Brown felt this was proper as his investigation showed Petitioner pulled the trigger and killed the victim and that Tony Oakley was present and had been charged with murder. Det. Bowen denied ever telling Petitioner he would make sure Tony got plenty of time if Petitioner didn't do what he said.

Det. Bowen further testified that, during the investigation, Petitioner had given police the name of an alibi witness and where she lived. Petitioner claimed he spent the night with this woman. When police contacted this woman, she denied being with Petitioner on the night of the murder and thus did not corroborate his alibi. The first time Det. Bowen heard the name "Gato" was at the hearing on the motion to withdraw. Det. Bowen also discussed testimony at preliminary hearing from Veronica Harrison that she overheard Petitioner and Tony Oakley discussing who was going to take the blame for the murder.[6] Det. Bowen denied Petitioner's claim that he somehow coerced

---

[6] Harrison testified at preliminary hearing that she "heard Tony telling [Petitioner] I am going to take the charge for you because you just got out of prison. And [Petitioner] replied, no,

Harrison to testify at the preliminary hearing in a manner favorable to the State's case.

The State concluded its case with testimony from plea counsel. Zachary Pyron testified that both he and his father, Rob Pyron, were present for Petitioner's final pre-trial conference on August 20, 2015. Rob[7] spoke alone with Petitioner about the case in the courtroom that morning. When the conversation ended, Zachary was informed that Petitioner wanted to enter a guilty plea. Petitioner was brought back to the courtroom in the afternoon, after the lunch recess, at which point he entered his plea. Zachary asked Petitioner when he returned whether Petitioner still wanted to enter the plea; Petitioner said yes and the plea was entered on the record.

Zachary testified that he had spoken with Petitioner many times since entering the case.[8] Petitioner brought up during their conversations the possibility of an alibi defense. However, the Pyrons were aware of the police investigating Petitioner's claim that he was with a woman the night of the murder and that the woman in question denied it. Petitioner had also mentioned a man who moved to California as a possible alibi witness. However, Petitioner was unable to provide any information like a phone number or address to allow the Pyrons to contact this purported alibi witness. Worse yet, Petitioner was not able to provide a first or last name for this

---

I am going to take my own charge." According to Harrison, this conversation occurred shortly after the murder.

7 Normally, we refer to witnesses and other relevant persons in a case by their last names. Because Zachary and Rob Pyron are related and share the same last name, however, we refer to them here by their first names.

8 The Pyrons served as court-appointed indigent counsel for Petitioner. Rob and Zachary Pyron both entered an appearance in the case shortly after the filing of the information.

person—only a nickname. The Pyrons thus were unable to confirm Petitioner's alibi. Zachary recalled attempting to contact one of Petitioner's brothers during his investigation of Petitioner's alibi but he never received a call back from the brother. Zachary denied "blowing off" Petitioner's claimed alibi. Rather, Petitioner's first alibi witness was deemed not credible and the second alibi witness was untraceable because all counsel had to go on was "a nickname and a state." Had Zachary received information about an alibi witness, he testified that he "definitely" would have investigated it.

Zachary discussed all of this with Petitioner before he entered his plea of guilty. Zachary also made clear to Petitioner in every conversation they had that if Petitioner wanted to go to trial, they would go to trial.[9] Zachary testified that he went to the jail approximately two (2) to four (4) times to see Petitioner about the case. This was exclusive of court appearances he made with Petitioner. The record shows Zachary handled Petitioner's preliminary hearing. Zachary also sent Petitioner four (4) letters during the case, including one in which Petitioner was urged to send back in a self-addressed, stamped envelope

---

9 The following exchange from Zachary's testimony is illustrative:

> Q Do you have any reason why [Petitioner] might testify that he felt like that he had no other choice but to plea [sic] and put some sort of blame on former counsel?
>
> A No. I have never been in [Petitioner's] shoes. I am sure naturally there is some pressure in that. I can't even imagine, but I think every conversation that I had with them I think it was pretty clear if you wanted to go to trial we go to trial. We never want our client to plead guilty to something they didn't do. I don't think I felt I ever pressured him one way or the other to enter a plea. I wouldn't wish that on anyone if they didn't want to do [it].

(5/27/2016 Tr. 59-60).

a list with the names of any witnesses to be included on the pre-trial witness list. Notably, Zachary never received any information back from Petitioner in response to this request.

Zachary did not remember Petitioner saying that a conversation with Det. Bowen influenced his decision to enter the guilty plea. Petitioner had mentioned earlier in the case that a guard at the jail was harassing him. In response, the Pyrons sent a letter to the Sheriff's Office addressing the issue and stating that any attempts to speak with Petitioner needed to go through them.

Rob Pyron testified that he spoke with Zachary about Petitioner's case numerous times—he estimated ten (10) to fifteen (15) times—as it progressed towards trial. According to Rob, Petitioner was wavering back and forth on what to do even before the pre-trial hearing. Rob described the conversation he had with Petitioner at the pre-trial hearing as follows:

> I remember the overall intent [sic] of the discussion was that if he went to trial that he would likely be convicted based on the evidence we knew that the State had against him that we had seen and come out in the Preliminary Hearing. And if he was convicted that juries often times become passionate and emotional in cases where a human life has been taken and he could get the maximum sentence which at that time was life without parole. And that he should consider entering a plea of, a blind plea. And because of his age that even though if he got a sentence of life in prison that he would still be—he would be considered for parole at an age where he could still have the possibility of being released from prison and having a productive life from the final stage of his life. That is my recollection of it.

(5/27/2016 Tr. 70).

Rob denied that he and his son "blew off" Petitioner's claimed alibi defense. Rob testified that he and Zachary talked numerous times about possible defenses in the case. Further, Zachary checked out the possible alibi witnesses suggested by Petitioner but could find no one to support an alibi defense. According to Rob, the Pyrons would have pursued any legitimate, credible alibi witnesses and taken the case to trial. Rob agreed that Petitioner's blind plea was a strategic decision based upon the prospects of conviction and the opportunities for a future life. Rob denied coercing Petitioner into entering the guilty plea. Rob testified that he and Zachary "had no reason to coerce [Petitioner]. We were defending [Petitioner] and we were trying to do the best we could for [Petitioner]." Although Rob testified that he and his son "were pretty passionate in what our advice is[,]" the Pyrons always tell their clients that the ultimate decision on whether to go to trial is left with the client.

Asked on cross whether he spoke with Petitioner about getting a split sentence, Rob testified as follows:

> A I don't remember specifically. I would think in any discussion that he would be told that the sentencing would be up to the judge, but about there being a split sentence. No, I don't think so.

(5/27/2016 Tr. 77).

ANALYSIS

In his first proposition of error, Petitioner complains that his guilty plea was not voluntary because he was coerced by his attorneys into entering this plea. Petitioner tells us on appeal he is innocent of the first degree murder charge to which he pled guilty and that it was a mistake to enter his plea.

Petitioner says his attorneys told him that he was going to lose at trial and thus needed to plead guilty in order to receive a suspended sentence.

This Court reviews the denial of a motion to withdraw guilty plea for an abuse of discretion. *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251, *overruled on other grounds, State v. Vincent*, 2016 OK CR 7, 371 P.3d 1127. On certiorari review of a guilty plea, our review is limited to two inquiries: (1) whether the guilty plea was knowing and voluntary; and (2) whether the district court accepting the guilty plea had jurisdiction. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142 (citing *Cox*, 2006 OK CR 51, ¶ 4, 152 P.3d at 247). A voluntary guilty plea waives all non-jurisdictional defects. *Cox*, 2006 OK CR 51, ¶ 4, 152 P.3d at 247 (citing *Frederick v. State*, 1991 OK CR 56, ¶ 5, 811 P.2d 601, 603). We review the entire record in examining the voluntariness of the plea. *Fields v. State*, 1996 OK CR 35, ¶ 28, 923 P.2d 624, 630; *Berget v. State*, 1991 OK CR 121, ¶ 15, 824 P.2d 364, 370.

The standard for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant. *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); *Hopkins v. State*, 1988 OK CR 257, ¶ 2, 764 P.2d 215, 216. When a defendant claims that his guilty plea was entered through inadvertence, ignorance, influence or without deliberation, he has the burden of showing that the plea was entered as a result of one of these reasons and that there is a defense that should be presented to the jury. *Estell v. State*, 1988 OK CR 287, ¶ 7, 766 P.2d 1380, 1383.

Petitioner fails to show the trial court abused its discretion in denying his motion to withdraw plea. Plea counsel's advice in this case does not equate to a false promise or some other form of coercion which rendered Petitioner's guilty plea involuntary. The record shows plea counsel had few good options in defense of their client. The State's evidence was strong. An eyewitness testified at preliminary hearing that she saw Petitioner shoot the victim in front of the convenience store. Another eyewitness put Petitioner at the crime scene fighting with the victim. Plea counsel investigated Petitioner's claimed alibi witnesses but this yielded no credible evidence to support an alibi defense. Under the total circumstances, the blind plea was a tactical choice, made after fully considering the options at hand and the likely outcomes from either choice. *See Fields*, 1996 OK CR 35, ¶ 44, 923 P.2d at 632 (plea was knowing and voluntary even though it was entered with the hopeful expectation of a lesser sentence). The record shows Petitioner was fully advised of the consequences of entering the blind plea of guilty in this case and that at all times his defense counsel told Petitioner it was his ultimate decision on whether to go to trial.[10]

The record too flatly refutes Petitioner's claim that he was somehow threatened or coerced into entering his guilty plea by Detective Bowen. That plea counsel could not remember Petitioner ever mentioning the purported

---

10 Petitioner speculates on appeal that the Pyrons coerced him into pleading guilty because "[h]ad both Rob and Zachary Pyron been tied up with [Petitioner] in a week-long trial, the Pyron law firm would not have made much money that week." Aplt. Br. at 11. Petitioner cites nothing in the record to support this claim. Moreover, this claim is wholly refuted by the Pyrons' testimony that they made clear to Petitioner it was *his* ultimate decision whether to enter a guilty plea or go to trial.

threat from Detective Bowen, but *did* remember another incident in which the Pyrons intervened early in the case when Petitioner told them about harassment by a jailer, speaks volumes to the meritless nature of this claim. Certainly Petitioner made no mention of Det. Brown's purported threat during the plea proceedings. On the contrary, Petitioner denied being coerced or threatened as a basis for entering his plea. Further, Det. Bowen denied in his testimony threatening or otherwise coercing Petitioner into entering a guilty plea. There is no credible evidence supporting Petitioner's claim in this regard.

At bottom, Petitioner's argument boils down to his belief that he should be allowed to withdraw his plea because he did not get the sentence he wanted. This is an insufficient basis upon which to withdraw his plea. *Lozoya v. State*, 1996 OK CR 55, ¶ 44, 932 P.2d 22, 34; *Fields*, 1996 OK CR 35, ¶¶ 53-54, 923 P.2d at 634. The record shows Petitioner's plea was knowingly and voluntarily entered. The trial court therefore did not abuse its discretion in denying Petitioner's motion to withdraw. Proposition I is denied.

In Proposition II, Petitioner complains that conflict counsel was ineffective because of a conflict of interest. Petitioner says conflict counsel "attempted to testify" during closing argument at the hearing on the motion to withdraw when he attempted to explain why Petitioner withdrew his original application to withdraw. Petitioner theorizes that conflict counsel should have instead been a formal witness at the hearing on the motion to withdraw. Petitioner claims that conflict counsel's advice to withdraw the original

application harmed Petitioner's defense at the hearing on the motion to withdraw.

This is the first opportunity in which this claim could be raised so it is properly before the Court. A criminal defendant is entitled to effective assistance of counsel at a hearing on a motion to withdraw. *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, 1117; *Randall v. State*, 1993 OK CR 47, ¶ 7, 861 P.2d 314, 316. The right to effective assistance of counsel includes the correlative right to representation that is free from conflicts of interest. *Carey*, 1995 OK CR 55, ¶ 8, 902 P.2d at 1118 (citing *Wood v. Georgia*, 450 U.S. 261, 271, 101 S. Ct. 1097, 1103, 67 L. Ed. 2d 220 (1981)).

To prevail on an ineffective assistance of counsel claim 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, 348, 100 S. Ct. 1708, 1718, 64 L. Ed. 2d 333 (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. However, "'[t]he mere appearance or possibility of a conflict of interest is not sufficient to cause reversal.'" *Rutan v. State*, 2009 OK CR 3, ¶ 67, 202 P.3d 839, 853 (quoting *Banks v. State*, 1991 OK CR 51, ¶ 34, 810 P.2d 1286, 1296).

Here, Petitioner shows, at best, the mere appearance or possibility of a conflict of interest. Petitioner testified at the hearing on the motion to withdraw why he withdrew his original application to withdraw plea. On direct, Petitioner testified that he withdrew his original application "to let the process go through and then proceed with it." Petitioner acknowledged on cross-examination that he withdrew his initial application to withdraw plea to see what kind of sentence he would end up with and, even at that point, Petitioner was hopeful he might receive a split sentence. Petitioner admitted being dismayed and disappointed when the trial court instead sentenced him to life without parole. Petitioner nonetheless claimed he "already had it in [his] mind" to file the application to withdraw plea "no matter what the Judge said".

Conflict counsel's argument explaining Petitioner's decision to withdraw his original application to withdraw was based on Petitioner's own testimony and bears all the hallmarks of advocacy, not witness testimony. Conflict counsel argued in this regard that Petitioner's motivation for withdrawing the original application was to reach a sentencing decision by the trial court. Conflict counsel adroitly described this decision as a procedural move to "get[ ] the cart before the horse and it got straightened up. The horse is now before the cart. That is why his second application was filed. His position and reasons have never changed since August 20th."

We see no basis in this record for finding conflict counsel ineffective. Conflict counsel made this same basic argument earlier in the case during a status conference in explaining Petitioner's decision to withdraw the

application pending the Court's decision on sentencing. Conflict counsel's advice was imminently reasonable considering the concerns expressed by Petitioner about his plea. Conflict counsel appropriately responded to the prosecutor's arguments on this point based on Petitioner's testimony. Conflict counsel was not ineffective and Proposition II is denied.

DECISION

The Petition for Writ of Certiorari is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY
THE HONORABLE GEORGE BUTNER, DISTRICT JUDGE

APPEARANCES IN DISTRICT COURT

ZACHARY PYRON
ROB L. PYRON
207 E. OAK
P.O. BOX 1663
SEMINOLE, OK 74818-1663
COUNSEL FOR DEFENDANT

SILAS R. LYMAN, II
1800 E. MEMORIAL ROAD, SUITE 106
OKLAHOMA CITY, OK 73131
COUNSEL FOR DEFENDANT
(MOTION TO WITHDRAW)

PAUL B. SMITH
FIRST ASSISTANT DISTRICT ATTORNEY
P.O. BOX 1300
WEWOKA, OK 74884
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

BOBBY LEWIS
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR PETITIONER

NO RESPONSE FROM THE STATE

OPINION BY: HUDSON, J.
LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR