

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RICKY ALLEN RINKER,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

Case No. C 2005-608

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OPINION GRANTING WRIT OF CERTIORARI

MAR 12 2007

MICHAEL S. RICHIE
CLERK

LEWIS, JUDGE:

Ricky Allen Rinker entered pleas of guilty and pleas of *nolo contendere*,¹ without an agreement as to the sentence he would receive, in Oklahoma County District Court Case No. CF-2004-99, before the Honorable Ray C. Elliott, District Judge. Rinker entered pleas of guilty to six (6) separate counts of the crime of Sexual Abuse of a Child, 10 O.S.2001, § 7115, (counts one through five and count nine). Rinker entered pleas of *nolo contendere* to three (3) separate counts of Indecent or Lewd Acts with a Child under Sixteen, 21 O.S.2001, § 1123, (counts 6-8). Rinker was sentenced on May 17, 2005, to forty (40) years on counts one through five and count nine; ten (10) years on count six; five (5) years on count seven; and ten (10) years on count eight. Counts one and four were ordered to run consecutively with each other; the

¹ The record refers to the pleas in these counts as “*Alford* pleas.”

remaining counts were ordered to run concurrently with each other and concurrently with count one. Rinker subsequently filed a motion to withdraw his pleas, which was denied at a hearing held before Judge Elliott.

Rinker is now before this Court appealing Judge Elliott's decision. This Court ordered the State to respond on April 19, 2006. Rinker now seeks relief from this Court raising the following propositions:

1. The State violated its plea agreement with Petitioner by recommending a significantly more severe sentence when it had previously indicated to Petitioner's counsel that it would "stand on 40" (ask for a recommended sentence of forty (40) years to do).
2. The pleas were not knowingly and voluntarily entered because Rinker was misadvised by the court and counsel concerning the applicable sentence.
3. The plea of guilty and summary of facts form does not contain a sufficient factual basis upon which the pleas can be sustained; and Rinker was denied the right to due process of law when the trial court did not ensure that a record was made of the actual plea and the sentencing hearing in violation of the Fourteenth Amendment to the United States Constitution and Article II, Section 7 of the Oklahoma Constitution.
4. The record is insufficient to establish that Rinker was competent to enter his pleas.
5. The commentary by the trial court during the hearing on the motion to withdraw plea evidences bias and ill will toward both Rinker, his crime, and defense counsel; and thus Rinker must be allowed to withdraw his plea, or in the alternative, be allowed a new hearing before a neutral judge.
6. The sentences imposed are excessive and must be modified; or, in the alternative, Rinker must be allowed to withdraw his pleas.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, motions and briefs of the parties, we grant Rinker's Writ of Certiorari and order that he be allowed to withdraw his pleas.

In deciding Rinker's Petition, we note that our only concern is whether the plea was entered knowingly and voluntarily. *Fields v. State*, 1996 OK CR 35, ¶ 38, 923 P.2d 624, 631-32. In proposition two, Rinker complains that he was not advised of the statutory limitation (the 85% rule) on parole eligibility for his crimes. In *Ferguson v. State*, 2006 OK CR 36, ¶¶ 3-4, 143 P.3d 218, 219, this Court held the failure to advise the defendant of this statutory limitation on parole eligibility rendered the plea involuntary.

The crimes for which Rinker was charged occurred sometime after September 30, 1999. The 85% rule, as it applies to the crimes charged herein, was enacted and became effective on July 1, 1999. See 21 O.S.Supp.1999, § 13.1. Therefore, his terms of imprisonment will be subject to the 85% mandatory parole eligibility law. However, Rinker was not informed that he would be required to serve 85% of any term before becoming eligible for parole. This error results in pleas that are not entered into knowingly and voluntarily, thus Rinker must be allowed to withdraw the pleas. See *Hunter v. State*, 1992 OK CR 1, ¶ 3, 825 P.2d 1353, 1355. ("a defendant who does not enter the plea knowingly and voluntarily must be allowed to withdraw it").

Our resolution of this issue renders Rinker's remaining propositions moot.

DECISION

Rinker's Petition for Writ of Certiorari is **GRANTED**, the Judgment and Sentence of the district court is hereby **VACATED**, and the case is **REMANDED** for further proceedings consistent with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: LEWIS, J.

LUMPKIN, P.J.:	DISSENTS
C. JOHNSON, V.P.J.:	CONCURS
CHAPEL, J.:	CONCURS
A. JOHNSON, J.:	CONCURS

LUMPKIN, VICE-PRESIDING JUDGE: DISSENT

I dissent to the Court's decision to grant certiorari in this case and thereby allow him to withdraw his pleas. There's really no "evidence" that Rinker was not advised of the 85% rule; there is merely the absence of any evidence that he was so advised in the record. This is partially because no transcript was made of the guilty plea. Petitioner waived that right. Petitioner entered "blind" pleas to the charges, and he was informed of the proper range of punishment for his crimes. The Court needs to remember a "blind plea" is just that, a plea of guilty without any guarantee as to what the sentence will be.

All we really have is Petitioner's bare claim that he did not "understand" his crimes were subject to the 85% rule, despite the fact that he was represented by a very competent, experienced attorney. He pled blind to the charges, admitted guilt, and waived a record being made of the proceedings.

Under these circumstances, I see no reason to grant Petitioner any relief. At most, we should remand the case for an evidentiary hearing on this issue, where we hear from the attorney in question and actually obtain some evidence to back up or refute these claims.

At times, the mere mention of *Anderson's* 85% rule has caused the Court to order relief when no relief is warranted. Our jurisprudence requires more than that. In addition, this is just another case which proves the concerns I

expressed in my separate writing to *Ferguson v. State*, 2006 OK CR 36, ___ P.3d
___, were valid.