

JUL 13 2005

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

DEAUNDRAE LANCE DORITY,)
)
 Appellant,)
)
 v.) No. F 2004-0328
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

SUMMARY OPINION
REVERSING AND REMANDING ACCELERATION OF
DEFERRED SENTENCE

Appellant, *pro se*, pled guilty January 7, 2003, to Trafficking in Illegal Drugs in Garfield County District Court Case No. CF-2002-308 and to Distribution of Controlled Substance in Garfield County District Court Case No. CF-2002-518. Appellant, age 19, received a five year deferred sentence in each case, after successfully completing the RID program as ordered by the District Court.

The State filed applications to accelerated Appellant's deferred sentences. Following a joint hearing March 18, 2004, the Honorable Ronald G. Franklin, District Judge, found Appellant failed to comply with the rules and conditions of probation. Judge Franklin sentenced Appellant to twenty-five years in each case and ordered the sentences to run consecutively. Appellant appeals from the acceleration of his deferred sentences.

On appeal Appellant raised the following propositions of error:

1. The acceleration hearing was structurally unfair because the trial court denied Dority the assistance of counsel without a knowing and voluntary waiver.
2. The trial judge pre-judged the ultimate sentence imposed at the acceleration hearing and refused to consider all possible punishment options which deprived Dority of his constitutional right to a fundamentally fair proceeding before a fair and impartial judge.
3. The trial court committed legal errors and/or abused its discretion when it ordered the sentences to be served consecutively.
4. The sentences imposed are excessive and must be modified.
5. The accumulation of errors resulted in a fundamentally unfair adjudicatory proceeding.

Finding Appellant able to hire his own attorney and failing to appear with counsel on March 18, 2004, the trial judge ordered the acceleration hearing to proceed without counsel representing Appellant. We find nothing in the record to support the trial judge's conclusion that this nineteen-year-old defendant was able to hire his own attorney.

Due process requirements in acceleration hearings include the right to counsel. See *Bourland v. State*, 1993 OK CR 14, ¶4, 848 P.2d 580. The right to counsel may be waived if done knowingly and voluntarily, but waiver will not be lightly presumed. The trial judge must indulge every reasonable presumption against waiver. *Painter v. State*, 1988 OK CR 224, ¶¶10-11, 762 P.2d 990. A record of the knowing and voluntary waiver is mandatory and absent a sufficient record, waiver will not be found. *Braun v. State*, 1995 OK CR 42, ¶¶10-12, 909 P.2d 783. In the present case we find nothing in the record that meets the requirements for a valid waiver of the right to counsel by Appellant. Therefore,

based upon a review of the record before this Court, we agree that Appellant's first proposition of error has merit and this case must be reversed.

As for the remaining propositions of error, Appellant did not file a motion to withdraw his plea of guilty in the District Court, and as a result, the only issue properly before this Court on appeal is the validity of the acceleration order. However, we find no record of Appellant being advised of the right to withdraw his plea of guilty upon acceleration as set forth in Rule 1.2(D)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005).

IT IS THEREFORE THE ORDER OF THIS COURT that the acceleration of Appellant's deferred sentences in the District Court of Garfield County, Case Nos. CF-2002-308 and CF-2002-518, is **REVERSED**. **SHOULD THE DISTRICT ATTORNEY ELECT TO SET A NEW HEARING ON THE APPLICATIONS TO ACCELERATE, THE DISTRICT COURT SHALL ENSURE APPELLANT IS PROPERLY REPRESENTED BY COUNSEL AND ADVISED OF THE RIGHT TO A CERTIORARI REVIEW OF THE VALIDITY OF THE PLEAS.**

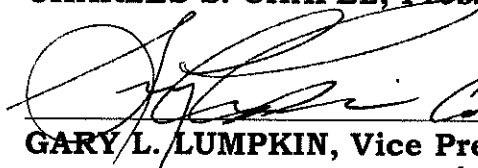
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13th

day of July, 2005.

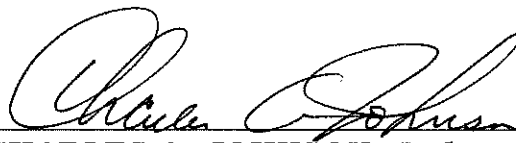


CHARLES S. CHAPEL, Presiding Judge

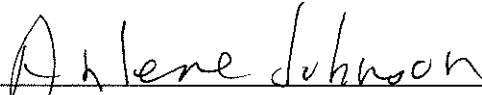


GARY L. LUMPKIN, Vice Presiding Judge

Cover in Results - I agree this matter must be remanded for a new acceleration hearing with Appellant either properly represented by counsel or a record made in accordance with Brown that supports a valid waiver. Even though I sympathize with the frustrations of trial judges dealing with individuals who fail to act when given sufficient time, the



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge

ATTEST:



Clerk

RC