

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CLIFFORD W. EAGLE,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. C-2014-778

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUL 13 2015
MICHAEL S. RICHIE
CLERK

SUMMARY OPINION DENYING CERTIORARI

LUMPKIN, VICE PRESIDING JUDGE:

Petitioner, Clifford W. Eagle, was charged by Amended Information in the District Court of Haskell County, Case No. CF-2012-53, with Second Degree Murder (21 O.S.1981, § 710.8). On July 29, 2014, Petitioner entered a negotiated guilty plea before the Honorable Brian C. Henderson, Associate District Judge.¹ Petitioner’s plea was accepted and the District Court sentenced Petitioner to imprisonment for forty-five (45) years with credit for time served.²

On August 6, 2014, Petitioner filed a *pro se* letter indicating that he wanted to withdraw the sentencing part of his plea. On August 12, 2014, Petitioner filed a second *pro se* letter giving notice of his intent to withdraw his plea based upon sentencing errors. On September 2, 2014, the District Court held a hearing on Petitioner’s requests. Petitioner affirmed under oath that he did not want to

¹ Petitioner was charged with First Degree Murder (21 O.S.Supp.1982, § 701.7) but pursuant to the terms of Petitioner’s plea agreement the State amended the Information by oral pronouncement.

² Because Petitioner’s offense occurred before the Legislature enacted 21 O.S.Supp.1999, § 13.1, his sentence is not subject to the 85% Rule.

withdraw his guilty plea but wanted sentence modification. The District Court denied Petitioner's requests. It is that denial which is the subject of this appeal.

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

- I. Mr. Eagle should be allowed to withdraw his plea as it was obtained through ignorance, inadvertence, and misunderstanding, especially as it relates to Mr. Eagle relinquishing his plea of not guilty and his rights to a jury trial and all other constitutional rights; and was therefore not knowingly and voluntarily entered, in violation of his right to Due Process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 2, section 7 of the Oklahoma Constitution.
- II. The trial court failed to appoint conflict-free counsel to represent Mr. Eagle at the hearing on his requests to withdraw his guilty plea, which violated his right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution and Art. II, Sec. 20 of the Oklahoma Constitution.
- III. The trial court abused its discretion in denying Mr. Eagle's request to withdraw his plea of guilty in violation of his right to Due Process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article II, Section 7 of the Oklahoma Constitution, as there was an insufficient factual basis to support a finding of guilt for second degree murder.
- IV. Defense counsel provided ineffective assistance to Mr. Eagle during both the guilty plea phase and the motion to withdraw guilty plea phase of the proceedings in this case, which violated his right to a critical stage of a criminal proceeding under the Sixth Amendment to the United States Constitution, and Article II, § 20 of the Oklahoma Constitution.

After thorough consideration of the 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 review of a certiorari appeal “is limited to two inquiries: (1) whether the guilty plea was made knowingly and voluntarily; and (2) whether the district court accepting the guilty plea had jurisdiction to accept the plea.” *Cox v. State*, 2006 OK CR 51, ¶ 4, 152 P.3d 244, 247 (citing *Frederick v. State*, 1991 OK CR 56, ¶ 5, 811 P.2d 601, 603). This Court will not interfere with the trial court’s decision to deny the withdrawal of a plea unless it is shown that the trial court abused its discretion. *Carpenter v. State*, 1996 OK CR 56, ¶ 40, 929 P.2d 988, 998. An abuse of discretion has been defined as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented or, stated otherwise, any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

As to Propositions One and Three, Petitioner concedes that he did not raise these issues in either of his written requests to withdraw his plea. Appeals of a judgment following a plea are to be taken by means of a petition for writ of certiorari. *Burnham v. State*, 2002 OK CR 6, ¶ 6, 43 P.3d 387, 389; 22 O.S.2011, § 1051. A petitioner must first file “an application to withdraw the plea within ten (10) days from the date of the pronouncement of the Judgment and Sentence, setting forth in detail the grounds for the withdrawal of the plea.” Rule 4.2(B), *Rules of the Oklahoma Court of Criminal Appeals*, Ch. 18, App. (2015). “No matter may be raised in the petition for a writ of certiorari unless the same has been raised in the application to withdraw the plea.” *Id.* In *Walker v. State*, 1998 OK CR 14, ¶ 3, 953 P.2d 354, 355, this Court

interpreted Rule 4.2 and stated “[w]e do not reach the merits of the first proposition, for Walker waived the issue by failing to raise it in his motion to withdraw guilty plea.”

We note that Petitioner did not present these claims in his Petition For Writ of Certiorari.³ The petition for a writ of certiorari shall include “[t]he errors of law urged as having been committed during the proceedings in the trial court which were raised in the application to withdraw plea.” Rule 4.3(C)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015). “The filing of the petition for writ of certiorari is jurisdictional and failure to timely file constitutes waiver of right to appeal.” Rule 4.3(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015).

We further note that Petitioner informed the trial court at the withdrawal hearing that he did not want to withdraw his guilty plea and admitted that his plea was knowingly and voluntarily entered. In *Bush v. State*, 2012 OK CR 9, 280 P.3d 337, we determined that a petitioner waives his right to appeal the trial court’s denial of his motion to withdraw pleas when he testifies at the withdrawal hearing that he does not want to withdraw his plea and admits that he knew what he was doing when he entered the pleas. *Id.*, 2012 OK CR 9, ¶¶ 20-21, 280 P.3d at 344. Under such circumstances, the trial court has no choice but to deny the application to withdraw plea. *Id.*

³ Appellate counsel seeks to create confusion in the record and disregards the rules and precedent regarding waiver and procedural bar by presenting propositions as if the issues had been appropriately raised. Counsel makes no attempt to argue why the rules do not apply or the fact Petitioner testified under oath he did not want to withdraw his plea of guilty.

As Petitioner has wholly failed to preserve appellate review of his claims of error in Propositions One and Three, we do not reach their merits. Propositions One and Three are denied.

In Proposition Two, Petitioner asserts that an actual conflict of interest at the withdrawal hearing denied him the effective assistance of counsel. Petitioner has not shown that it was in his interest to testify against defense counsel at the withdrawal hearing. Petitioner neither challenged counsel's performance in his written requests to withdraw his plea nor raised such a claim at the withdrawal hearing. Petitioner testified at the withdrawal hearing that he did not want to withdraw his guilty plea but, instead, solely sought a reduction in his sentence. He affirmed under oath that his plea was knowingly and voluntarily entered. As such, we find that Petitioner has not demonstrated that an actual conflict of interest adversely affected his lawyer's performance at the withdrawal hearing. *Carey v. State*, 1995 OK CR 55, ¶ 10, 902 P.2d 1116, 1118, citing *Cuyler v. Sullivan*, 446 U.S. 335, 349-50, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980) (“[T]he possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance.”). Proposition Two is denied.

In Proposition Four, Petitioner contends that he was denied the effective assistance of counsel. He asserts that defense counsel rendered ineffective assistance prior to his plea and then, again, at the plea proceedings. As Petitioner did not raise the issue of counsel's ineffectiveness in his written

requests to withdraw his plea, did not present the claims in his petition for writ of certiorari, and testified at the withdrawal hearing that he did not want to withdraw his guilty plea, we find that Petitioner has waived appellate review of these claims. *Bush*, 2012 OK CR 9, ¶¶ 20-21, 280 P.3d at 344; *Walker*, 1998 OK CR 14, ¶ 3, 953 P.2d at 355.

Petitioner further asserts that counsel was ineffective at the withdrawal hearing. He argues that defense counsel failed to advocate for him at the withdrawal hearing. We note that this appeal is Petitioner's first opportunity to challenge counsel's effectiveness at the withdrawal hearing. As Petitioner has not forwarded any evidence that counsel should have introduced or argument that counsel should have made at the withdrawal hearing, we find that he has not shown there is a reasonable probability that the outcome of the withdraw hearing would have been different but for counsel's alleged errors. *Bland v. State*, 2000 OK CR 11, ¶ 112-13, 4 P.3d 702, 730-31; *Phillips v. State*, 1999 OK CR 38, ¶ 103, 989 P.2d 1017, 1043 (citing *Strickland v. Washington*, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069, 80 L.Ed.2d 674 (1984)). Proposition Four is denied.

Simultaneous with the filing of his brief, Petitioner filed his Application for an Evidentiary Hearing on Sixth Amendment Claims pursuant to Rule 3.11, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015). He challenges counsel's effectiveness prior to the entry of his guilty plea. As Petitioner did not raise the issue of counsel's ineffectiveness in his written requests to withdraw his plea, did not present the claims in his petition for writ

of certiorari, and testified at the withdrawal hearing that he did not want to withdraw his guilty plea, we find that Petitioner has waived appellate review of these claims. *Bush*, 2012 OK CR 9, ¶¶ 20-21, 280 P.3d at 344; *Walker*, 1998 OK CR 14, ¶ 3, 953 P.2d at 355. Petitioner's application is **DENIED**.⁴

DECISION

Accordingly, the order of the district court denying Petitioner's Motion to Withdraw Plea is **AFFIRMED**. 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 HASKELL COUNTY
THE HONORABLE BRIAN C. HENDERSON, ASSOCIATE DISTRICT JUDGE

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NO RESPONSE NECESSARY

⁴ Although not a part of the record on appeal, the Court Clerk is directed to keep a copy of Petitioner's application. See Rule 1.13(K), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015).

OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: CONCUR

JOHNSON, J.: CONCUR

LEWIS, J.: CONCUR

HUDSON, J.: CONCUR

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