IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CLIFFORD LYLE LITTLERAVEN,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
	)	
v.	)	Case No. C 2014-693
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JUL - 9 2015
MICHAEL S. RICHIE
CLERK

OPINION GRANTING CERTIORARI

LEWIS, JUDGE:

Petitioner, Clifford Lyle Littleraven, entered a no contest plea to the crime of child neglect in violation of 21 O.S.2011, § 843.5(C), after former conviction of two or more felonies, in Grady County District Court case number CF-2013-149 before the Honorable Richard G. Van Dyck, District Judge. Judge Van Dyck accepted the plea on January 24, 2014, and ordered a presentence investigation. At the sentencing hearing, the trial court sentenced Littleraven to thirty (30) years imprisonment.[1]

Thereafter, Littleraven sent a letter to the district court indicating a desire to withdraw his plea. He alleged that he had been given bad advice by his attorney and "was coerced and misled to enter my current plea, therefore due to incompetent counsel I wish to withdraw my current plea . . . ."

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[1] Child neglect is a crime for which a person must serve 85% of a sentence before becoming eligible for parole. 21 O.S.2011, § 13.1(14) (any crime committed against a child provided for in 21 O.S. § 843.5)

The trial court accepted the letter as an application to withdraw plea and set a hearing date. A hearing was held; both Littleraven and his plea counsel testified during the hearing. Subsequently, the trial court denied Littleraven's motion to withdraw plea.

Littleraven has perfected this appeal and raises the following propositions of error:

1. Because the record shows defense counsel gave Petitioner inaccurate and misleading advice, Petitioner's plea cannot be characterized as knowingly and voluntary entered.

2. Under the facts and circumstances of the case, a 30-year sentence for child neglect is shockingly excessive.[2]

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we find that the issues raised in proposition one have merit requiring this Court to grant the petition for certiorari, vacate the judgment and sentence, and remand with direction that Littleraven be permitted to withdraw his plea.

The State in its response brief has conceded that Littleraven was given inaccurate information regarding the range of punishment to which he was facing upon his no contest plea to child neglect, after former conviction of two or more felony offenses. In order to satisfy the requirements of a voluntary plea, a defendant must understand the range of punishment, including any mandatory minimum sentence required to be served, for the crime to which he

[2] Our resolution of proposition one vacates the sentence in this case, thus proposition two is not addressed.

is entering his plea, as well as prior convictions which enhance the sentence. *Verduzco v. State*, 2009 OK CR 24, ¶ 5, 217 P.3d 625.

We find that Littleraven was, in fact, misled regarding the minimum sentence he could receive upon his plea, thus his plea was not knowing and voluntary. The failure to understand the proper range of punishment indicates that Littleraven did not understand the nature and consequences of his plea. This understanding is a basic tenet of a knowing and voluntary plea under *King v. State*, 1976 OK CR 103, 553 P.2d 529. Littleraven must be allowed to withdraw his plea, because it was not entered with a proper understanding of the range of punishment.[3]

DECISION

Littleraven's petition for a writ of certiorari is **GRANTED**. The judgment and sentence of the District Court is **VACATED**. The case is **REMANDED** with instructions allowing Littleraven to withdraw his no contest plea in this case and allowing the district court to resume proceedings consistent with this Opinion. 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.

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[3] For a first time offender, the child neglect statute provides for punishment "not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or both such fine and imprisonment." 21 O.S.2011, § 843.5(C).

For a defendant with two or more felony convictions, 21 O.S.2011, § 51.1, provides that the range of punishment is four (4) years to life imprisonment. As child neglect is not enumerated in 57 O.S.2011, § 571, the minimum punishment of twenty (20) years is inapplicable.

AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY
HONORABLE RICHARD G. VAN DYCK, DISTRICT JUDGE

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OPINION BY: LEWIS, J.

SMITH, P.J.: Concurs in Results
LUMPKIN, V.P.J.: Concurs
JOHNSON, J.: Concurs in Results
HUDSON, J.: Concurs