



JIMENEZ v. STATE

2024 OK CR 33

Case Number: C-2023-951

Decided: 12/05/2024

LUIS JIMENEZ, Petitioner v. STATE OF OKLAHOMA, Respondent



Cite as: 2024 OK CR 33, __ __

SUMMARY OPINION DENYING CERTIORARI

HUDSON, JUDGE:

¶1 On January 9, 2023, Petitioner, Luis Jimenez, entered a semi-blind plea of no contest in the District Court of Texas County, Case No. CF-2022-12, to Count 6: First Degree Rape, in violation of 21 O.S.2011, § 1114.¹ The Honorable Jon K. Parsley, District Judge, accepted Jimenez's plea and continued sentencing pursuant to the parties' plea agreement.

¶2 On March 22, 2023, the matter came on for sentencing. After hearing the victim's prepared victim impact statement, and argument from both parties, Judge Parsley sentenced Jimenez to thirty-five years imprisonment, with all but the first twenty years suspended, plus a \$1,000.00 fine. The trial court further imposed various costs and fees. Jimenez must serve 85% of his sentence before becoming eligible for parole consideration. 21 O.S.2011, § 13.1.

¶3 On March 30, 2023, Jimenez, through plea counsel, Nathan McCaffrey, filed a timely application to withdraw his plea.² Conflict counsel, Ryan Loewenstern, subsequently entered an appearance and filed two supplemental briefs.³ At a hearing held on May 31, 2023, Judge Parsley took up the matter. At the conclusion of the hearing, the trial court denied Jimenez's motion to withdraw.⁴

¶4 Jimenez now seeks a writ of certiorari raising two propositions of error each complaining of ineffective assistance of plea counsel. After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and Jimenez's brief, we find that no relief is required under the law and evidence. Petitioner's Petition for Writ of Certiorari is **DENIED**.

¶5 Our review on certiorari is limited to two inquiries: (1) whether the plea was knowing and voluntary; and (2) whether the district court accepting the plea had jurisdiction. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142. "A voluntary guilty plea waives all non-jurisdictional defects." *Id.* This Court reviews the denial of a motion to withdraw a guilty plea for an abuse of discretion. *Anderson v. State*, 2018 OK CR 13, ¶ 4, 422 P.3d 765, 767. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. The burden is on the petitioner to show a defect in the plea process that entitles him to withdraw his guilty plea. See *Elmore v. State*, 1981 OK CR 8, ¶ 8, 624 P.2d 78, 80.

¶6 The standard for determining the validity of a 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 (1970); *Hopkins v. State*, 1988 OK CR 257, ¶ 2, 764 P.2d 215, 216. The Supreme Court has defined a "voluntary" guilty plea in pertinent part as one made by a defendant who is "fully aware of the direct consequences[.]" *Brady v. United States*, 397 U.S. 742, 755 (1970) (internal quotation omitted). We examine the entire record before us on appeal to determine the knowing and voluntary nature of the plea. *Fields v. State*, 1996 OK CR 35, ¶ 28, 923 P.2d 624, 630. "Neither Petitioner's dissatisfaction with the sentence, nor an

inaccurate prediction by counsel of the likely sentence to be imposed on a blind plea, is a sufficient ground for withdrawal of a plea." *Champion v. State*, 2020 OK CR 8, ¶ 3, 461 P.3d 952, 954; *see also Lozoya v. State*, 1996 OK CR 55, ¶ 44, 932 P.2d 22, 34 (A defendant's plea is not rendered involuntary by his aversion to the sentence imposed.).

¶7 We review Petitioner's two propositions of error together as he complains in each that he was denied the effective assistance of plea counsel. In Proposition I, Petitioner specifically argues plea counsel acted unreasonably when he failed to (1) effectively go through the plea paperwork with Petitioner; (2) confirm if Petitioner wanted a presentence investigation; (3) investigate any of the facts; and (4) present "any sort of mitigation" at the sentencing hearing. In Proposition II, Petitioner "incorporate[s] the facts and argument in Proposition I" and broadly argues that plea counsel failed to sufficiently provide Petitioner with a "full and accurate understanding of his options in the proceedings."

¶8 To prevail on an ineffective assistance of counsel claim, Petitioner must show both that counsel's performance was deficient, and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *See also Harrington v. Richter*, 562 U.S. 86, 104 (2011) (discussing *Strickland* two-part standard). "This Court need not determine whether counsel's performance was deficient if the claim can be disposed of based on lack of prejudice." *Taylor v. State*, 2018 OK CR 6, ¶ 15, 419 P.3d 265, 270. "*Strickland* prejudice, in the guilty plea context, is a reasonable probability that, but for counsel's errors, the petitioner would not have pled guilty and would have insisted on going to trial." *Champion*, 2020 OK CR 8, ¶ 11, 461 P.3d at 955 (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). Petitioner fails to meet his burden of showing deficient performance and prejudice with any of his claims.

¶9 *First*, although the Plea of Guilty Summary of Facts form as completed has some notable deficiencies, the total record, including the plea colloquy and the testimony at the motion to withdraw hearing, shows Petitioner entered his plea knowingly, intelligently, and voluntarily. That Petitioner was not specifically asked whether he wanted a presentence investigation and report *alone* does not affect the validity of his plea. *Sprigner v. State*, 1976 OK CR 36, ¶ 4, 546 P.2d 645, 647 (noncompliance with Title 22, Section 982 does not invalidate a defendant's plea as any asserted error can be "cured by re-sentencing following a presentence investigation and report."). Nor does Petitioner "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded [no contest] and would have insisted on going to trial." *Hill*, 474 U.S. at 59. Petitioner thus fails to meet his burden of showing deficient performance and prejudice with this aspect of his claim.

¶10 *Second*, Title 22, Section 982 was complied with in this case. Section 982 no longer mandates that a presentence investigation be conducted for any offender pleading guilty or no contest to a violent felony "as part of or in exchange for a plea agreement." 22 O.S.Supp.2019, § 982(E) ("The district attorney *may* have a presentence investigation made . . . on each person charged with a violent felony offense and entering a plea . . . as part of or in exchange for a plea agreement." (emphasis added)). *Compare 22 O.S.Supp.2017, § 982(D)* (previous version of presentence investigation statute stating: "The district attorney *shall* have a presentence investigation made . . . on each person charged with a violent felony offense and entering a plea . . . as part of or in exchange for a plea agreement." (emphasis added)). Thus, unless the district attorney directs that a presentence investigation be prepared pursuant to § 982(E), the preparation of a presentence investigation is entirely discretionary with the trial court under current Oklahoma law. 22 O.S.Supp.2019, § 982(E).

¶11 Here, even though Petitioner's plea is referred to as a "semi-blind plea agreement" or a "partial plea agreement," the record clearly shows that his plea of no contest was entered "in exchange" for the dismissal of eleven felony counts, agreed to sentencing parameters for the remaining Count 6 charge, and a 60-day delay in sentencing. A presentence investigation was thus not mandated. The State specifically waived its right to obtain a presentence investigation; plea counsel did not ask that one be prepared; and Judge Parsley announced that he would not order one. Given the total circumstances of this case, including the parties' partial plea agreement, plea counsel's decision not to request a presentence investigation was a reasonable strategic choice.

¶12 Moreover, it is purely speculative whether the trial court would have granted a request by Petitioner for a presentence investigation, *and if it had done so*, whether the presentence report made would have contained mitigating information that would have resulted in the imposition of a lesser sentence. *See Fulgham v. State*, 2016 OK CR 30, ¶¶ 17-18, 400 P.3d 775, 780 (rejecting "conclusory and speculative" ineffective assistance of counsel claim and noting that "[w]e cannot blindly make

the leap necessary to find prejudice . . . based on speculation alone."). Petitioner has failed to present any evidence demonstrating the reasonable probability of a different result in the proceedings. Petitioner thus fails to show deficient performance or prejudice from plea counsel's waiver of a presentence investigation.

¶13 *Third and fourth*, Petitioner's claims that plea counsel failed to sufficiently investigate the facts of this case and to present mitigation evidence at the sentencing hearing are each based on "assumptions and speculations" that are insufficient to show ineffective assistance of counsel. *Fulgham*, 2016 OK CR 30, ¶ 18, 400 P.3d at 780 ("this Court cannot find *Strickland* prejudice resulted through assumptions and speculation"). These aspects of Petitioner's claim thus fail.

¶14 *Finally*, we reject Petitioner's broad claim that he entered his plea "without the required full and accurate understanding of his options" due to plea counsel's deficient performance. The total record shows that Petitioner was fully aware of the direct, material consequences of entering his semi-blind no contest plea. *See Brady*, 397 U.S. at 755. Petitioner understood the remaining charge filed against him, the range of punishment he faced, the parameters of his partial plea agreement, was fully aware of the ramifications of pleading no contest and understood the permanent and binding nature of his plea. His plea represents a voluntary, knowing, and intelligent choice among the alternative courses of action open to him. *Hopkins*, 1988 OK CR 257, ¶¶ 2-3, 764 P.2d at 216.

¶15 The record of the withdrawal hearing shows, at bottom, that Petitioner was dissatisfied with the sentence imposed. Petitioner's resulting dissatisfaction with his sentence, however, is not a sufficient ground for withdrawal of his plea. *Champion*, 2020 OK CR 8, ¶ 3, 461 P.3d at 954; *see also Lozoya*, 1996 OK CR 55, ¶ 44, 932 P.2d at 34 (a plea is not rendered involuntary by the defendant's aversion to the sentence imposed); *Fields*, 1996 OK CR 35, ¶ 53, 923 P.2d at 634 (plea was knowingly and voluntarily entered despite the Petitioner's unhappiness with his sentence).

¶16 Under the total circumstances presented here, Petitioner fails to show Judge Parsley's denial of the motion to withdraw was an abuse of discretion. *See Pullen v. State*, 2016 OK CR 18, ¶ 4, 387 P.3d 922, 925 (defining "abuse of discretion"). Petitioner's Propositions I and II are denied.

DECISION

¶17 The Petition for Writ of Certiorari is **DENIED**. The Judgment and Sentence of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2024), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM
THE DISTRICT COURT OF TEXAS COUNTY
THE HONORABLE JON K. PARSLEY, DISTRICT JUDGE**

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NO RESPONSE FROM THE STATE

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OPINION BY: HUDSON, J.
ROWLAND, P.J.: CONCUR
MUSSEMAN, V.P.J: CONCUR IN RESULT
LUMPKIN, J.: CONCUR
LEWIS, J.: CONCUR

FOOTNOTES

HUDSON, JUDGE:

¹ Petitioner's plea was referred to as a "semi-blind plea agreement" because the parties had agreed to some sentencing parameters. Per the partial plea agreement, the State agreed to dismiss Counts 1--5 and Counts 7--12 with costs. As to the remaining Count 6 charge, the State agreed to ask for "40 years with all but 25 years suspended (25 to do)," and Petitioner agreed to ask for "no less than 10 years incarceration and some amount of time thereafter suspended." The parties also agreed that sentencing would be set out approximately 60 days so Petitioner could have sufficient time to prepare for his incarceration and the hearing.

² The State filed a response to Jimenez's original motion on April 3, 2023.

³ Conflict counsel filed a Supplemental Motion to Withdraw Plea on May 22, 2023, and the State filed a response to Jimenez's supplemental motion on May 23, 2023. On May 31, 2023--the day of Jimenez's withdrawal hearing--conflict counsel filed a 1st Amended Supplemental Motion to Withdraw Plea that made minor corrections and edits to the May 22nd supplemental motion. Given that the amended supplemental motion was substantially the same as Petitioner's supplemental motion, the parties agreed to proceed with the withdrawal hearing.

⁴ The trial court heard testimony at the withdrawal hearing from Petitioner, Vonda Wilkins, and plea counsel. Wilkins was Petitioner's first attorney in this case. The trial court appointed Wilkins on February 23, 2022, shortly after Petitioner's arrest and incarceration. Petitioner hired plea counsel, Nathan McCaffrey, after bonding out of jail on June 3, 2022.

Cite Name

Level

Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
<u>1988 OK CR 257</u> , <u>764 P.2d 215</u> ,	<u>HOPKINS v. STATE</u>	Discussed at Length
<u>1996 OK CR 35</u> , <u>923 P.2d 624</u> ,	<u>FIELDS v. STATE</u>	Discussed at Length
<u>1996 OK CR 55</u> , <u>932 P.2d 22</u> ,	<u>Lozoya v. State</u>	Discussed at Length
<u>2009 OK CR 30</u> , <u>220 P.3d 1140</u> ,	<u>LEWIS v. STATE</u>	Discussed
<u>2012 OK CR 7</u> , <u>274 P.3d 161</u> ,	<u>NELOMS v. STATE</u>	Discussed
<u>2016 OK CR 18</u> , <u>387 P.3d 922</u> ,	<u>PULLEN v. STATE</u>	Discussed
<u>2016 OK CR 30</u> , <u>400 P.3d 775</u> ,	<u>FULGHAM v. STATE</u>	Discussed at Length
<u>2018 OK CR 6</u> , <u>419 P.3d 265</u> ,	<u>TAYLOR v. STATE</u>	Discussed
<u>2018 OK CR 13</u> , <u>422 P.3d 765</u> ,	<u>ANDERSON v. STATE</u>	Discussed
<u>2020 OK CR 8</u> , <u>461 P.3d 952</u> ,	<u>CHAMPION v. STATE</u>	Discussed at Length
<u>1981 OK CR 8</u> , <u>624 P.2d 78</u> ,	<u>ELMORE v. STATE</u>	Discussed
<u>1976 OK CR 36</u> , <u>546 P.2d 645</u> ,	<u>SPRIGNER v. STATE</u>	Discussed

Title 21. Crimes and Punishments

Cite	Name	Level
<u>21 O.S. 13.1</u> ,	<u>Required Service of Minimum Percentage of Sentence - Offenses Specified</u>	Cited
<u>21 O.S. 1114</u> ,	<u>Rape in First Degree - Second Degree</u>	Cited

Title 22. Criminal Procedure

Cite	Name	Level
<u>22 O.S. 982</u> ,	<u>Presentence Investigation</u>	Discussed at Length