

IN THE COURT OF CRIMINAL APPEALS OF THE
STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 23 2019

DANA MECHELE LANGLEY,)

JOHN D. HADDEN
CLERK

Petitioner,)

Not for Publication

vs.)

Case No. C-2017-1036

THE STATE OF OKLAHOMA,)

Respondent,)

SUMMARY OPINION DENYING CERTIORARI

HUDSON, JUDGE:

Petitioner, Dana Mechele Langley, was charged in Tulsa County District Court, Case No. CF-2016-2606, with Counts 1 and 9: Lewd Molestation, in violation of 21 O.S.2011, § 1123; Counts 7 and 8: Enabling Child Sexual Abuse, in violation of 21 O.S.2011, § 843.5(G); and Counts 12 and 13: Child Sexual Abuse, in violation of 21 O.S.2011, § 843.5(E). Langley entered a blind plea of guilty to the charges on June 19, 2017, before the Honorable Sharon K. Holmes, District Judge. The trial court accepted Langley's plea and deferred sentencing pending the completion and filing of a presentence investigation report. On August 28, 2017, after

receiving evidence and hearing argument of counsel, Judge Holmes sentenced Langley to twenty (20) years imprisonment each on Counts 1 and 9; and life imprisonment each on Counts 7, 8, 12 and 13.¹ The trial court ordered Counts 1 and 9 be served concurrently each to the other. The court further ordered that Counts 7, 8, 12, and 13 be served concurrently each to the other but consecutive to Counts 1 and 9. Judge Holmes further imposed various fines, costs and fees.

On September 6, 2017, Langley, through plea counsel, filed a timely application to withdraw her guilty plea. Conflict counsel was appointed September 7, 2017. A hearing on Langley's application to withdraw was held on September 28, 2017. After hearing testimony from Langley and argument from counsel for both parties, Judge Holmes denied the motion. Langley now seeks a writ of certiorari alleging the following propositions of error:

- I. IT WAS BOTH PLAIN ERROR AND AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO DENY PETITIONER'S APPLICATION TO WITHDRAW HER GUILTY PLEA WHERE THE RECORD FAILED TO SHOW AN ADEQUATE FACTUAL BASIS FOR THE ELEMENTS [SIC] OF "FOR THE PURPOSE OF

¹ Under 21 O.S.2011, § 13.1, Langley must serve a minimum of 85% of her sentences before she is eligible for parole.

SEXUAL GRATIFICATION” OF THE TWO COUNTS
OF LEWD MOLESTATION;

- II. PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BOTH AT THE PLEA HEARING AND AT THE PLEA WITHDRAWAL HEARING; and
- III. IN LIGHT OF PETITIONER’S UNLIKELINESS TO REOFFEND, FOUR LIFE SENTENCES AND TWO TWENTY YEAR SENTENCES ARE EXCESSIVE AND SHOULD BE MODIFIED.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits, and Petitioner’s brief, we find that no relief is required under the law and evidence. Langley’s Petition for Writ of Certiorari is **DENIED**.

Certiorari review is limited to whether the plea was entered voluntarily and intelligently before a court of competent jurisdiction. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142. This Court reviews the denial of a motion to withdraw a plea for an abuse of discretion. *Id.*, 2009 OK CR 30, ¶ 5, 220 P.3d at 1142; *Carpenter v. State*, 1996 OK CR 56, ¶ 40, 929 P.2d 988, 998. “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 the plea. See *Elmore v. State*, 1981 OK CR 8, ¶ 8, 624 P.2d 78, 80. 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.

Proposition I: Langley challenges the factual basis provided for her Counts 1 and 9 pleas to Lewd Molestation. This claim is procedurally defective as she failed to raise this issue in her application to withdraw her guilty plea or at any point during the hearing on the motion to withdraw. Because this claim was not specifically raised before the hearing court, the district court had no opportunity to adjudicate the claims. This issue is therefore not properly before this Court. Rule 4.2(B), *Rules of the Oklahoma Court of Criminal Appeals*, Ch. 18, App. (2019) (“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.”); *Bush v. State*, 2012 OK CR 9, ¶¶ 13, 28, 280 P.3d 337, 343, 345 (claim challenging sufficiency of the factual basis waived by defendant’s

failure to argue the issue at the motion to withdraw hearing).
Proposition I is denied.

Proposition II: Langley's claim of ineffective assistance of plea counsel is procedurally defective as she failed to challenge plea counsel's effectiveness in her application to withdraw her guilty plea or at any point during the hearing on her motion. "It is not enough that all the facts necessary to support the federal claim were before the state [district] court[]." *Anderson v. Harless*, 459 U.S. 4, 6, 103 S. Ct. 276, 277, 74 L. Ed. 2d 3 (1982). Rather, Langley had an obligation to present both the factual and legal substance of her claim to the district court in the motion to withdraw proceedings. Langley has therefore waived appellate review of this claim. Rules 4.2(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019); *Weeks*, 2015 OK CR 16, ¶¶ 27-29, 362 P.3d at 657.

As to Langley's ineffective assistance of conflict counsel claim, Langley contends she was prejudiced by conflict counsel's failure to (1) advocate her cause by supplementing plea counsel's original motion to withdraw; and (2) "argue from plea counsel's motion."

Langley specifically asserts counsel should have challenged the factual basis for Langley's pleas to Counts 1 and 9.

This is the first opportunity in which this claim could be raised so it is properly before the Court. "A criminal defendant is entitled to effective assistance of counsel at a hearing on a motion to withdraw[.]" *Carey v. State*, 1995 OK CR 55, ¶ 5, 902 P.2d 1116, 1117; *Randall v. State*, 1993 OK CR 47, ¶ 7, 861 P.2d 314, 316. 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, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). See also *Harrington v. Richter*, 562 U.S. 86, 104-05, 131 S. Ct. 770, 787-88, 178 L. Ed. 2d 624 (2011) (summarizing *Strickland* two-part test).

Langley's argument regarding the manner in which conflict counsel attended to the withdrawal motion filed by plea counsel is conclusory and speculative and does not carry her burden to prove her claim of ineffectiveness. *Fulgham v. State*, 2016 OK CR 30, ¶ 18, 400 P.3d 775, 780-81 (rejecting "conclusory and speculative" ineffective assistance claim). Moreover, Langley fails to demonstrate

conflict counsel's failure to challenge the factual basis provided for Langley's Counts 1 and 9 pleas to Lewd Molestation amounts to deficient performance. The record on appeal contains sufficient evidence showing that Langley committed the two acts of lewd molestation for the purpose of sexual gratification. Thus, the district court had a sufficient factual basis upon which to take Langley's pleas. Proposition II is denied.

Proposition III: "This Court will not modify a sentence within the statutory range unless, considering all the facts and circumstances, it shocks the conscience." *Baird v. State*, 2017 OK CR 16, ¶ 40, 400 P.3d 875, 886; *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. In judging whether a defendant's sentence is excessive, we do *not* conduct a proportionality review on appeal. *Rea*, 2001 OK CR 28, ¶ 5, 34 P.3d at 149. In the present case, Langley's sentences fall within the specified statutory range. While her sentences are substantial, Langley's sentences are factually substantiated and justified under the facts of this case and do not shock the Court's conscience. Her final proposition of error is thus denied.

DECISION

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. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE SHARON K HOLMES, DISTRICT JUDGE

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NO RESPONSE FROM THE
STATE

OPINION BY: HUDSON, J.
LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCUR
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR