

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JOHN D. HADDEN
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Cancelled/Suspended/Revoked (misdemeanor); Count 3: Unlawful Possession of Drug Paraphernalia (misdemeanor); and Count 4: Failure to Maintain Insurance or Security (misdemeanor). Petitioner's plea was pursuant to an agreement that if Petitioner was successful in Drug Court, he would be sentenced to a term of life imprisonment with the sentence suspended; but if unsuccessful in Drug Court he would be sentenced to a term of life imprisonment with thirty-five years to serve and the balance suspended. In Case Nos. CF-2011-74 and CF-2008-353, Petitioner stipulated to an application to revoke alleging he violated probation by committing the new crimes alleged in Case No. CF-2016-561. Petitioner's stipulations were pursuant to agreements that if Petitioner was successful in Drug Court, his sentences in CF-2011-74 and CF-2008-353 would remain suspended; but if unsuccessful in Drug Court his suspended sentences would be revoked.

On February 15, 2018, the State filed in all three cases a Petition to Remove Defendant From Drug Court alleging he failed to comply with rules and failed to progress in Drug Court because Petitioner: (a) committed the new crimes of Count 1: Trafficking in Illegal Drugs (Methamphetamine), and Count 2: Unlawful Use of a

Police Radio, as charged in Osage County District Court Case No. CF-2018-40; (b) committed the new crime of Possession of Controlled Dangerous Substance (Methamphetamine), misdemeanor, as charged in Kay County District Court Case No. CM-2017-546; (c) was not current with his Bridgeway requirements (counseling meetings) and was behind fifteen meetings; and (d) owed \$130.00 in Drug Court fees. On August 3, 2018, the State filed in all three cases an Amended Petition to Remove Defendant From Drug Court adding an allegation that Petitioner (e) committed the new crime of Possession of a Firearm After Felony Conviction, After Former Conviction of Two or More Felonies, as charged in Osage County District Court Case No. CF-2017-499.

On August 10, 2018, the Drug Court termination hearing was held before Judge Bandy. After hearing testimony from the prosecution's witnesses¹ along with argument from counsel for both parties, the District Court terminated Petitioner from Drug Court. Judge Bandy further sentenced Petitioner in accordance with his plea

¹ The testimony from this hearing was summarized fully in our Summary Opinion affirming the District Court's order terminating Petitioner from Drug Court. See *Spencer Joe Cuccaro v. State of Oklahoma*, No. F-2018-1087 (Okl. Cr. Dec. 19, 2019) (unpublished).

agreement and Drug Court contract. Petitioner was sentenced in CF-2016-561 to life imprisonment with all but the first thirty-five years suspended on the felony count of possession of methamphetamine. In CF-2011-74, Petitioner was sentenced to fifteen years imprisonment on the revocation. In CF-2008-353, Petitioner was sentenced to five years imprisonment on the revocation. Judge Bandy ordered the sentences imposed in all three cases to be served consecutively and ordered no credit for time served.

On August 17, 2018, Petitioner filed his Application to Withdraw Plea of Guilty in all three cases. Petitioner alleged that his plea was not knowingly and voluntarily entered and there was an insufficient factual basis for the plea. Specifically, Petitioner alleged he was threatened and coerced by a Kay County Sheriff's Deputy, "Brian Ware[.]" to sign for the Drug Court deal. Petitioner further alleged he had no knowledge that termination from the Drug Court program would result in a collective twenty year sentence in CF-2011-74 and CF-2008-353 that would run consecutive to the sentence in CF-2016-561.

On September 12, 2018, the hearing on Petitioner's Application to Withdraw Plea of Guilty was held for all three cases. After hearing

testimony from five witnesses including Petitioner and his plea counsel, Judge Bandy denied Petitioner's motion to withdraw plea.

Petitioner now appeals the District Court's order denying his motion to withdraw plea. Petitioner filed his Notice of Intent to Appeal and Designation of Record form with the district court clerk in CF-2016-561, CF-2011-74 and CF-2008-353 on November 6, 2018. Petitioner filed his Petition for Writ of Certiorari with this Court on December 11, 2018. Petitioner's brief in support of his petition for writ of certiorari was filed with this Court on March 5, 2019. Petitioner now seeks a writ of certiorari alleging the following propositions of error:

- I. PETITIONER'S PLEAS OF NO CONTEST WERE ENTERED AS A RESULT OF COERCION, AND THEREFORE THE PLEAS WERE NOT KNOWING OR VOLUNTARY; and
- II. PETITIONER'S PLEAS WERE NOT KNOWINGLY AND VOLUNTARILY ENTERED DUE TO THE MISUNDERSTANDING OF THE PUNISHMENT HE WOULD FACE IF HE DID NOT SUCCESSFULLY COMPLETE THE DRUG COURT PROGRAM.

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. Petitioner's Petition for Writ of Certiorari is therefore **DENIED.**

Proposition I. This Court reviews the denial of a motion to withdraw guilty plea for an abuse of discretion. *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251, *overruled on other grounds by State v. Vincent*, 2016 OK CR 7, 371 P.3d 1127. On certiorari review of a guilty plea, our review 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. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142 (citing *Cox*, 2006 OK CR 51, ¶ 4, 152 P.3d at 247). A voluntary guilty plea waives all non-jurisdictional defects. *Cox*, 2006 OK CR 51, ¶ 4, 152 P.3d at 247 (citing *Frederick v. State*, 1991 OK CR 56, ¶ 5, 811 P.2d 601, 603).

In his first proposition of error, Petitioner alleges as he did below that he was physically and mentally abused and coerced by Deputy Matt Ware to enter his plea of no contest in CF-2016-561 and stipulate to the applications to revoke in CF-2011-74 and CF-2008-353. Thus, Petitioner contends he “must be allowed an opportunity to withdraw his plea.”

From the outset, there is no question Petitioner's challenge to his no contest plea in CF-2016-561 is properly before this Court. Petitioner alleges here as below that his plea to the charges in that case was coerced by Deputy Ware and, thus, was not voluntarily made. This is the proper subject of a certiorari appeal. See Rule 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020) ("In all cases, to appeal from any *conviction* on a plea of guilty or nolo contendere, the defendant must have filed in the trial court clerk's office an application to withdraw the plea within ten (10) days from the date of the pronouncement of the Judgment and Sentence[.]") (emphasis added).

However, to the extent Petitioner also seeks to withdraw his stipulation to the applications to revoke in CF-2011-74 and CF-2008-353, this aspect of his Proposition I claim is not cognizable under 22 O.S.2011, § 1051 in a certiorari appeal. Petitioner is not challenging his underlying convictions in CF-2011-74 and CF-2008-353. Petitioner's stipulations to the application to revoke admitted to the facts necessary to support revocation of his suspended sentences after having pled guilty to the charges in those cases years earlier. The question at the revocation hearing was simply whether

Petitioner's previously-imposed sentences should be executed based upon the defendant's violation of the rules and conditions of probation. *See Tryon v. State*, 2018 OK CR 20, ¶ 113, 423 P.3d 617, 648. At a revocation hearing, the court only makes a factual determination involving the existence of a violation of the rules and conditions of the suspended sentence.² Because Petitioner is not attempting to appeal his convictions on plea of guilty in CF-2011-74 and CF-2008-353, his attempted certiorari appeal from these two cases is not properly before this Court and are denied. *See Tilden v. State*, 2013 OK CR 10, ¶ 4, 306 P.3d 554, 556.

² It is true that the revocation orders in CF-2011-74 and CF-2008-353 state Petitioner entered a plea of "no contest" to the State's applications to revoke. We have held, however, that:

[I]t matters not whether Petitioner's actions at the revocation hearing are characterized as a "plea of guilty" to the Motion to Revoke, are held to be an admission/stipulation to the facts alleged, or are construed as a confession of judgment. The classification placed upon Petitioner's acts at the revocation hearing is of no procedural consequence (as far as appeal is concerned) because an order of revocation is not a "conviction" but is instead simply an order that a sentence previously entered be executed, either in whole or in part.

Burnham v. State, 2002 OK CR 6, ¶ 6 n.2, 43 P.3d 387, 389 n.2.

Petitioner's challenge to the District Court's order denying his motion to withdraw plea in CF-2016-561 is denied on the merits as there was no abuse of discretion. The District Court's rejection of Petitioner's claim of abuse and coercion was amply supported by the record in this case. The record shows Petitioner's plea was knowing and voluntary in all respects. The standard for determining the validity of a guilty 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, 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (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, 90 S. Ct. 1463, 1472, 25 L. Ed. 2d 747 (1970) (internal quotation omitted).

In the present case, the record shows Petitioner made a strategic decision to take a plea deal requiring his successful completion of Drug Court, followed by a lifetime of a suspended, probated sentence. Petitioner was fully advised, and aware, of the consequences of failure in Drug Court based upon his conversations

both with counsel and the plea judge prior to entering the plea. Under the total circumstances presented here, the District Court did not abuse its discretion in denying Petitioner's application to withdraw plea. Proposition I is denied.

Proposition II. In his second proposition, Petitioner complains his plea was not knowingly and voluntarily made because he was not aware of the severe sentence he would face were he unsuccessful in Drug Court. Petitioner raised this claim in his motion to withdraw plea so it is properly before this Court on appeal. The trial court did not abuse its discretion in rejecting this claim. The record shows Petitioner was aware prior to entering his plea that he would face a life sentence if he failed out of Drug Court. The terms of the plea agreement were expressly set forth in a document signed by Petitioner entitled "Drug Court Sentence Recommendation." It expressly stated that if Petitioner failed to complete drug court after being admitted, the State would recommend Petitioner be sentenced in CF-2016-561 to Count 1: Life Imprisonment, Petitioner to serve thirty-five years imprisonment with the balance suspended. Further, the State would recommend Petitioner be revoked in full on CF-2008-

353 and CF-2011-74 with all sentences to run consecutively and no credit for time served.

The record confirms Petitioner was well aware of the consequences he faced if he failed out of Drug Court. Again, Petitioner made a strategic decision to accept the Drug Court plea deal, knowing the relative risks and potential benefits of that offer. The fact that Petitioner utterly failed to complete the Drug Court requirements does not reflect on the validity of Petitioner's plea. Rather, it reflects upon Petitioner's failure to follow through despite knowing the consequences for failure were so high. Proposition II is 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. (2020), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF KAY COUNTY
THE HONORABLE DAVID BANDY, ASSOCIATE DISTRICT JUDGE**

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NO RESPONSE FROM THE
STATE

OPINION BY: HUDSON, J.

LEWIS, P.J.:	CONCUR
KUEHN, V.P.J.:	SPECIALLY CONCUR
LUMPKIN, J.:	CONCUR IN RESULTS
ROWLAND, J.:	CONCUR

KUEHN, VICE PRESIDING JUDGE, SPECIALLY CONCURRING:

I agree with the Majority that ample evidence supports the revocation of Petitioner's suspended sentences and his termination from Drug Court. I specially concur to discuss what the Majority labels as Petitioner's "strategic decision" to enter into Drug Court (only to fail within three months) after agreeing to go to prison for life *even if he succeeded in the program.*

Petitioner was offered *life imprisonment plus 20 years of probation* upon completion of Drug Court or a 55 year prison sentence. In what universe is that a bargain? I have reviewed many cases from Kay County Drug Court in which the plea "bargain" included a life term. If a defendant deserves a life term, he has no business being accepted into Drug Court in the first place. Defense attorneys and Drug Court Judges should be wary of life "bargains." A defendant who deserves a life sentence, even if they complete the program, probably has significant criminal history, is likely a danger to society, and certainly has little chance of completing a recovery program. The prosecution must believe as much, or its offer would be more reasonable. Why, then, would the State in this case offer

such a dangerous criminal a chance to remain free in the community?

In this case, like many from Kay County, the defendant received a life sentence even upon completion of the Drug Court program. Drug Court Judges should refuse to accept such ridiculous plea “bargains,” as they are authorized to do under the statute.¹ Likewise, defense attorneys should be careful not to counsel clients to accept this express lane to prison through the lure of Drug Court.

¹ Under 22 O.S. § 471.6(A)(3), when considering any such plea agreement, the court can evaluate whether “the terms and conditions of the written negotiated plea... are appropriate... .” The judge can also deny admission into the program at the final eligibility hearing if, in the court’s discretion, the offender is “inappropriate for admission to the program.” 22 O.S. § 471.6(B)(5). Under these provisions, a judge can determine that an offender is not eligible, or that a proposed plea agreement is inappropriate.

LUMPKIN, JUDGE: CONCUR IN RESULTS

I concur in affirming the Judgment and Sentence in this case but write separately to point out that the revocation is not a part of the certiorari appeal regardless of the fact that Petitioner stipulated to the revocation. *See Burnham v. State*, 2002 OK CR 6, ¶ 8, 43 P.3d 387, 390.