

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA**

CYNTHIA ROWSHELL GAY,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case No. C-2019-227

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

OCT 31 2019

**JOHN D. HADDEN
CLERK**

SUMMARY OPINION DENYING CERTIORARI

LUMPKIN, JUDGE:

Petitioner Cynthia Rowshell Gay, while represented by counsel, entered guilty pleas pursuant to a plea agreement with the State to the charges of Count 1, Driving While Under the Influence, in violation of 47 O.S.2011, § 11-902 and Count 2, Driving While Under Suspension, in violation of 47 O.S.2011, § 6-303(B), in the District Court of Oklahoma County, Case No. CF-2019-369.¹ The Honorable Kathryn R. Savage, Special Judge, accepted the pleas on February 19, 2019. Pursuant to her plea agreement, Petitioner received

¹ Petitioner had a prior municipal Driving Under the Influence conviction, which made the current charge a felony.

pertinently a five-year sentence on Count 1, with all but the first thirty days suspended and a one year suspended sentence on Count 2, with the sentences running concurrently to one another. On March 1, 2019, Petitioner filed an Application to Withdraw Guilty Plea and on March 21, 2019, the Honorable Kathryn R. Savage, Special Judge, held a hearing on the application to withdraw plea. The Court denied Petitioner's application. Petitioner raises the following proposition of error:

Ms. Gay did not knowingly and voluntarily enter her plea of guilty, and thus the District Court erred when it denied Ms. Gay's Application to Withdraw her Guilty plea.

After thorough consideration of this proposition and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that neither reversal nor modification is required under the law and evidence.

On *certiorari* review, our primary concern in evaluating the validity of a guilty plea is whether the plea was entered voluntarily and intelligently. See *Boykin v. Alabama*, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 1711-12, 23 L. Ed. 2d 274 (1969); *Ocampo v. State*, 1989 OK CR 38, ¶ 3, 778 P.2d 920, 921. On appeal, this Court reviews the denial

of a petitioner's motion to withdraw plea for an abuse of discretion. *Lewis v. State*, 2009 OK CR 30, ¶ 5, 220 P.3d 1140, 1142. 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 Plea of Guilty Summary of Facts form, which Petitioner admitted she signed and which she admitted contained truthful answers, reflects Petitioner's voluntary choice to plead guilty and receive a suspended sentence. Petitioner had two prior felony convictions, so she was no stranger to criminal procedure. She admitted she signed the plea documents to "get out of jail." The desire to get out of jail does not render Petitioner's plea involuntary. *Cf. United States v. Webb*, 433 F.2d 400, 404 (1st Cir.1970) (finding the defendant's claim that he pled guilty because he feared being sent to an undesirable location for his incarceration insufficient to find his plea involuntary). It was only after Petitioner consulted with her relatives that Petitioner decided she wanted to seek to withdraw her plea. Disappointment with the sentence imposed does not afford

grounds for withdrawal of a plea of guilty. *Miles v. U.S.*, 385 F.2d 541, 544 (10th Cir.1967); *Lozoya v State*, 1996 OK CR 55, ¶ 44, 932 P.2d 22, 34.

The trial court found Petitioner's plea was knowingly and voluntarily entered on the date she entered her plea. "For the representations of the defendant, his [or her] lawyer, and the prosecutor at such a [plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 73-74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977). The trial court further remembered Petitioner's plea hearing, and at the conclusion of the hearing on the application to withdraw, affirmed its finding that she entered her plea knowingly and voluntarily. The record reflects that Petitioner was fully advised of and understood the ramifications of her plea. The trial court found incredible Petitioner's belated insistence that she did not understand if she violated the rules and conditions of her suspended sentence, she could go to prison. We find no abuse of discretion in the trial court's denial of the motion to withdraw guilty plea. This proposition is denied.

DECISION

The Petition for a *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 the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE KATHRYN R. SAVAGE, SPECIAL JUDGE

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NO RESPONSE NECESSARY

OPINION BY: LUMPKIN, J.

LEWIS, P.J.: Concur
KUEHN, V.P.J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

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