

OCT 10 2019

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA JOHN D. HADDEN
CLERK

JAMES MICHAEL SIMMONS,) NOT FOR PUBLICATION
)
Petitioner,)
)
v.) Case No. C-2018-1050
)
THE STATE OF OKLAHOMA,)
)
Respondent.)

**SUMMARY OPINION DENYING PETITION
FOR WRIT OF CERTIORARI**

LEWIS, PRESIDING JUDGE:

James Michael Simmons, Petitioner, pled nolo contendere to making threats by electronic device to perform acts of violence, a misdemeanor, in violation of 21 O.S.2011, § 1172(A)(3), in the District Court of Mayes County, Case No. CF-2017-350. The Honorable Terry H. McBride, District Judge, accepted the plea and deferred judgment and sentence for one (1) year, subject to rules and conditions of probation and payment of various fees and costs. Petitioner timely filed an application to withdraw his plea, which the trial court denied. Petitioner now seeks the writ of certiorari in the following propositions of error:

1. The trial court failed to use the uniform guilty plea form mandated by this Court's rules;
2. Mr. Simmons should be allowed to withdraw his plea because he did not understand the consequences of his plea, therefore the trial court's denial of the motion to withdraw plea was an abuse of discretion;
3. The State provided an insufficient offer of proof to support Mr. Simmons's plea of no contest;
4. Mr. Simmons was denied the effective assistance of plea and withdrawal counsel.

Certiorari review is limited to whether the plea was entered voluntarily and intelligently before a court of competent jurisdiction, *Weeks v. State*, 2015 OK CR 16, ¶ 11, 362 P.3d 650, 654; whether the sentence is excessive, *Whitaker v. State*, 2015 OK CR 1, ¶ 9, 341 P.3d 87, 90; whether counsel was constitutionally effective at either the plea hearing or the withdrawal hearing, *Tate v. State*, 2013 OK CR 18, ¶ 38, 313 P.3d 274, 284-85, *Lozoya v. State*, 1996 OK CR 55, 932 P.2d 22; and whether the State has the power to prosecute the defendant at all, *Weeks*, 2015 OK CR 16, ¶ 12, 362 P.3d at 654.

Petitioner claims in Proposition One that the trial court erred when it failed to use the uniform guilty plea form mandated by this Court's rules. Despite the trial court's omission to use the form required by Rule 4.1, *Rules of the Court of Criminal Appeals*, 22

O.S.Supp.2018, Ch. 18, App. for a guilty or nolo contendere plea to a misdemeanor that is a predicate for a felony second offense, we find Petitioner suffered no prejudice, as the record is sufficient to review his certiorari appeal. Proposition One is denied.

In Proposition Two, Petitioner argues that he did not adequately understand the nature and consequences of his plea. We find the trial court's advice concerning the nature and consequences of the plea complied with the requirements of *King v. State*, 1976 OK CR 103, 553 P.2d 529, 535. Petitioner's motion to withdraw the plea on this ground was properly denied.

Petitioner argues in Proposition Three that the factual basis for his plea is insufficient. We find from the entire record that the factual basis is sufficient to show that Petitioner committed the crime with which he was charged; and for the court to conclude it was not sentencing an innocent man to criminal punishment. *Lozoya v. State*, 1996 OK CR 55, ¶ 41, 932 P.2d 22, 34. Proposition Three is denied.

In Proposition Four, Petitioner argues that he was denied the effective assistance of both plea and withdrawal counsel. Reviewing this claim according to the two-pronged standard of deficient

performance and prejudice established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), we find neither deficient performance nor the required prejudice resulting from any alleged omission by counsel. Proposition Four is denied.

DECISION

The petition for the writ of certiorari is **DENIED**. The Judgment and Sentence 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.

**APPEAL FROM THE DISTRICT COURT OF MAYES COUNTY
THE HONORABLE TERRY H. McBRIDE, DISTRICT JUDGE**

APPEARANCES AT TRIAL

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NO RESPONSE NECESSARY

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