

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

RAYVON LATROY JOHNSON,

Petitioner,

vs.

THE STATE OF OKLAHOMA,

Respondent.

)
) NOT FOR PUBLICATION
)

) No. C-2018-675
)

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

JUN - 6 2019

JOHN D. HADDEN
CLERK

SUMMARY OPINION GRANTING CERTIORARI

KUEHN, VICE PRESIDING JUDGE:

Rayvon Latroy Johnson entered a negotiated plea to Count III, Assault and Battery with a Deadly Weapon in violation of 21 O.S.2011, § 652, in the District Court of Oklahoma County, Case No. CF-2011-7038. The Honorable Cindy Truong sentenced Petitioner to twenty (20) years imprisonment, all suspended. Petitioner filed a motion to withdraw his plea on February 17, 2015. After a hearing on June 25, 2018, the Honorable Glenn M. Jones denied the motion as untimely. Petitioner timely filed this petition for writ of certiorari. We directed a response from the State, which was filed on May 2, 2019.

Petitioner raises two propositions of error in support of his petition:

- I. The District Court abused its discretion when it denied Petitioner's motion to withdraw plea of guilty based upon a clearly erroneous determination that the Petitioner's motion was filed "out of time."
- II. Mr. Johnson's counsel failed to provide effective assistance of counsel during the evidentiary hearing on Mr. Johnson's motion to withdraw plea of guilty, in violation of the Sixth and Fourteenth Amendments of the United States Constitution and article II, § 7 and § 20 of the Oklahoma Constitution, because counsel failed to establish that Mr. Johnson's plea withdrawal motion was, in fact, timely filed under Oklahoma law.

Judge Jones found that Petitioner's original February 17, 2015 motion to withdraw his pleas was out of time by one day, and both parties agreed. Petitioner's motion was due on Monday, February 16, 2015. In 2015, that Monday was President's Day and the courthouse was closed. Any document due on that date could be filed on the next succeeding business day. 25 O.S.Supp.2012, § 82.1(C). Petitioner's motion was timely filed.

In a thorough and painstaking brief, the State concedes error, admitting that the trial court abused its discretion in finding the filing untimely and further noting that defense counsel was ineffective for failing to check the dates. We agree. The Petition for Writ of Certiorari is granted, and the case remanded for a hearing on Petitioner's Motion to Withdraw Plea of Guilty.

DECISION

The Petition for Certiorari is **GRANTED**, and the case is **REMANDED** to the District Court of Oklahoma County for a hearing on Petitioner's Motion to withdraw Plea of Guilty. 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 GLENN M. JONES, DISTRICT JUDGE

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OPINION BY KUEHN, V.P.J.

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: RECUSE