

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

BOBBY RAY LEWIS,)	
)	
Petitioner,)	NOT FOR PUBLICATION
)	
v.)	Case No. C-2018-861
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUN - 6 2019

JOHN D. HADDEN
CLERK

OPINION DENYING CERTIORARI

LUMPKIN, JUDGE:

Petitioner, Bobby Ray Lewis, was charged by Information in District Court of Okfuskee County Case No. CF-2017-17 with Driving Under the Influence (Count 1) (47 O.S.Supp.2016, § 11-902), Leaving the Scene of an Accident with Injury (Count 2) (47 O.S.2011, § 10-102), and Failure to Report a Personal Injury Accident (Misdemeanor) (Count 3) (47 O.S.2011, § 10-107). In District Court of Okfuskee County Case No. CF-2018-21, Petitioner was charged with Assault and Battery on a Police Officer (Counts 1 & 2) (21 O.S.Supp.2015, § 649) and Assault and Battery on an Emergency Medical Care Provider (Count 3) (21 O.S.2011, 650.4).

- I. Petitioner is entitled to withdraw his pleas because the pleas were not knowingly and voluntarily entered.

However, we do not reach the merits of this claim. Instead, we find that this appeal should be dismissed.

Procedural Status of Appeal

It is apparent from the face of the record that Petitioner's Petition For Writ of Certiorari is not properly before the Court. Appeals of a judgment following a plea are to be taken by means of a petition for writ of certiorari. *Burnham v. State*, 2002 OK CR 6, ¶ 6, 43 P.3d 387, 389; 22 O.S.2011, § 1051. Rule 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019) provides that "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." In *Scott v. State*, 1987 OK CR 52, ¶¶ 8-9, 734 P.2d 326, 328, this Court determined that the defendant's conviction became final when he failed to file the requisite motion to withdraw his guilty plea within ten days from the date of the pronouncement of the judgment and sentence. See also *Fleming v. Evans*, 481 F.3d 1249, 1255 (10th Cir.

2007) (recognizing that conviction becomes final under Oklahoma law when defendant fails to timely file motion to withdraw guilty plea).

In the present case, the District Court orally pronounced judgment and sentence on Petitioner in both cases on June 27, 2018. Petitioner did not file a motion to withdraw his plea within ten days of this date. When this occurred, Petitioner's conviction became final by operation of law and the trial court lost jurisdiction over the case outside of a motion for new trial (22 O.S.2011, § 952), properly filed application for post-conviction relief (22 O.S.2011, § 1080), or request for sentence modification (22 O.S.Supp.2018, § 982a). When Petitioner filed his Motion to Withdraw on July 17, 2018 twenty days had passed since the District Court's oral pronouncement of judgment and sentence. Therefore, the District Court did not have jurisdiction to enter the order denying Petitioner's untimely motion to withdraw. Accordingly, this appeal is dismissed.

DECISION

Petitioner's Petition For Writ of Certiorari is not properly before the Court and is hereby **DISMISSED**. 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 OKFUSKEE COUNTY
THE HONORABLE LAWRENCE W. PARISH, DISTRICT JUDGE

APPEARANCES AT TRIAL

CURT ALLEN
INDIGENT DEFENSE SYSTEM
P.O. BOX 998
OKMULGEE, OK 74447
COUNSEL FOR DEFENDANT
AT PLEA

ARLAN BULLARD
ATTORNEY AT LAW
110 N. WILLOW STREET, STE B
PAULS VALLEY, OK 73075
COUNSEL FOR DEFENDANT
AT WITHDRAW HEARING

EMILY MUELLER
ASSISTANT DISTRICT ATTORNEY
P.O. BOX 225
OKEMAH, OK 74859
COUNSEL FOR THE STATE

APPEARANCES ON APPEAL

ROBERT W. JACKSON
APPELLATE COUNSEL
INDIGENT DEFENSE SYSTEM
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR PETITIONER

NO RESPONSE NECESSARY

OPINION BY: LUMPKIN, J.

LEWIS, P.J.: Concur

KUEHN, V.P.J.: Concur

HUDSON, J.: Concur

ROWLAND, J.: Concur