

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

ROBERT EARL RICHARDSON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION  
Case No. C-2006-649

COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUN 21 2007

**SUMMARY OPINION GRANTING CERTIORARI**

MICHAEL S. RICHIE  
CLERK

**A. JOHNSON, JUDGE:**

Petitioner Robert Earl Richardson pled guilty in the District Court of Jefferson County, Case No. CF-2001-80, to Shooting with Intent to Kill in violation of 21 O.S.2001, § 652(A). The Honorable George W. Lindley sentenced Richardson to twenty years imprisonment and a \$2,000.00 fine on April 2, 2002. At the conclusion of the sentencing proceeding, Richardson advised Judge Lindley in person and later in writing that he wanted to withdraw his guilty plea. Richardson's motion was set to be heard, but was continued twice because no writ to return Richardson to the court was issued. Richardson's motion was not heard for nearly four years when Richardson petitioned this Court for a Writ of Mandamus (MA-2005-1190). This Court granted the writ and ordered the district court to hold a hearing. The Honorable Joe H. Enos heard Richardson's motion on March 21, 2006, and denied it in a written order. Richardson now seeks review of that denial by petitioning this Court for *certiorari*.

He raises eight propositions of error for review.<sup>1</sup> Because it requires relief, we address only his third proposition.<sup>2</sup>

Richardson argues that his plea was not knowing and voluntary because he was not advised by the trial court judge that he would have to serve 85% of any sentence before being eligible to be considered for parole (the 85% Rule). 21 O.S.2001, §§ 12.1 and 13.1. Richardson's attorney raised the issue below at the hearing on the motion to withdraw plea, thus preserving the issue for review. Rule 4.2 (B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007).

This Court recently held that a trial court's failure to advise a defendant of the 85% Rule before entry of a blind plea constitutes reversible error. *Pickens v. State*, 2007 OK CR 18, ¶ 2, \_\_\_P.3d\_\_\_. Richardson was neither advised by the trial court at the plea proceeding nor on the Summary of Facts Form about the 85% Rule. The attorney representing him at the plea testified at the hearing on the motion to withdraw that it was his practice to advise

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<sup>1</sup> The propositions of error are:

1. There was no factual basis for the plea.
2. The plea was entered as a result of coercion and undue influence, therefore, the plea was not voluntary.
3. The trial court failed to inform Petitioner of the sentence for the charged crime and there is no clear record that Petitioner was properly informed about the 85 percent rule.
4. The trial court failed to hold the hearing within 30 days.
5. Petitioner received ineffective assistance of counsel.
6. The trial court failed to ensure Petitioner was competent to enter a plea.
7. The sentence was excessive and the trial judge failed to give full effect to mitigating circumstances.
8. Cumulative error deprived Petitioner of a fair hearing and due process of law.

<sup>2</sup> We find no State response is necessary under the circumstances of this case given the Court's recent pronouncement on the issue.

clients about the 85% Rule, but that he had no independent recollection of advising Richardson about the rule. According to Richardson, his attorney spent little time with him and discussed few details about his case. Without evidence that he was advised of the 85% Rule, this Court must allow Richardson to withdraw his plea. *Pickens*, 2007 OK CR 18, ¶ 2.

**DECISION**

The Petition for a Writ of Certiorari is **GRANTED**. The Judgment and Sentence of the District Court is **VACATED** and the matter **REMANDED** to the district court with instructions to allow Richardson to withdraw his plea and proceed to trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF JEFFERSON COUNTY  
THE HONORABLE JOE H. ENOS, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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3101 CASTLE ROCK  
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DENNIS GAY  
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**OPINION BY: A. JOHNSON, J.**  
**LUMPKIN, P.J.: Dissent**  
**C. JOHNSON, V.P.J.: Concur**  
**CHAPEL: Concur**  
**LEWIS, J.: Concur**

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**LUMPKIN, PRESIDING JUDGE: DISSENT**

I respectfully dissent to the granting of Petitioner's application to withdraw plea of guilty. *See Pickens v. State*, 2007 OK CR 13, \_\_\_ P.3d \_\_\_ (Lumpkin, P.J.: Dissent). The attorney in this case testified it was his practice to advise clients of the 85% Rule. Even though he had no independent recollection of what happened this particular time, evidence of his professional practice is sufficient to affirm the decision of the trial court.