

Barry CARTER *v.* STATE of Arkansas

CR 84-163

685 S.W.2d 812

Supreme Court of Arkansas
Opinion delivered March 18, 1985

CRIMINAL PROCEDURE — WITHDRAWAL OF GUILTY PLEA. — A motion to withdraw a guilty plea under Ark. R. Crim. P. 26.1 must be made prior to sentencing.

Appeal from Jefferson Circuit Court; *H.A. Taylor*, Judge; affirmed.

John L. Kearney, for appellant.

Steve Clark, Att'y Gen., by: *Patricia G. Cherry*, Asst. Att'y Gen., for appellee.

DARRELL HICKMAN, Justice. Barry Carter, through his attorney, negotiated a plea of guilty to a first degree murder charge for a sentence of 40 years imprisonment, consecutive with one he was serving. Thirteen days later, with new counsel, Carter sought to set aside the plea and sentence. The ground for the motion was essentially mental incompetence. The trial judge, noting a review of the record, denied the motion without a hearing.

On appeal it is argued that the court should have held a hearing before acting, and, further, the motion should have been granted. It was filed pursuant to A.R.Cr.P. Rule 26.1, which provides that a plea may be withdrawn upon a timely motion to correct a manifest injustice. The motion was meritless as a matter of law because it must be made prior to sentencing. *Rawls v. State*, 264 Ark. 954, 581 S.W.2d 311 (1979); A.R.Cr.P. Rule 26.1 (e).

Affirmed.