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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

CR-07-0166

Johnnie C. Bethea

v.

State of Alabama

Appeal from Baldwin Circuit Court
(CC-06-330)

BASCHAB, PRESIDING JUDGE

Pursuant to a negotiated agreement, the appellant, Johnnie C. Bethea, pled guilty to felony driving under the influence ("felony DUI"), a violation of §32-5A-191(a) and (h), Ala. Code 1975. The trial court sentenced him to serve

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a term of eight years in prison. It also ordered him to pay a \$5,000 fine. The appellant filed a pro se motion to withdraw his guilty plea, which the trial court summarily denied. This appeal followed.

The appellant argues that the trial court erroneously denied his motion to withdraw his guilty plea. In his motion, he contended that trial counsel told him he would be placed on probation for two years. The State did not refute the appellant's specific claim. Also, the trial court did not make any findings of fact regarding the appellant's specific claim. Because the appellant raised a claim that may be meritorious, the trial court is in the best position to make findings of fact regarding that claim. Therefore, we remand this case to that court with instructions that it make specific, written findings of fact as to the claim the appellant raised in his pro se motion to withdraw his guilty plea. See Vinnie v. State, 866 So. 2d 1175 (Ala. Crim. App. 2002); Stallings v. State, 793 So. 2d 867 (Ala. Crim. App. 2000); Tubbs v. State, 753 So. 2d 1209 (Ala. Crim. App. 1999). On remand, the trial court may order the State to respond to the appellant's specific claim and/or may conduct an

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evidentiary hearing on that claim. If the trial court determines that the appellant is entitled to relief, it may order such relief. The trial court shall take all necessary action to see that the circuit clerk makes due return to this court at the earliest possible time and within 42 days after the release of this opinion. The return to remand shall include the trial court's specific, written findings of fact; a copy of the State's response, if any; and a transcript of the remand proceedings, if any, conducted by the trial court.

REMANDED WITH INSTRUCTIONS.

McMillan, Shaw, Wise, and Welch, JJ., concur.