

conferred and Petitioner agreed to enter a guilty plea to the felony possession charge and a plea of *nolo contendere* to the charge of Driving without a Seatbelt. In exchange, the State agreed to recommend that Petitioner be sentenced to two (2) years with a referral for a pre-sentence investigation for the Possession charge, and a \$25.00 fine, plus costs, for the Seatbelt violation. The case was continued until Friday, February 3, 2006, for completion of the written plea statement, waiver of jury and non-jury trial, and entry of the pleas.

On February 3, 2006, Petitioner appeared with counsel and was advised by the State that unless she entered a plea "accepting the State's theory of the case" (which apparently serves as the basis for the pending charge against Petitioner's co-defendant, Mark McElroy), the State would withdraw its recommendation for disposition of the case. Petitioner refused to accede to the State's demands, and decided to enter a non-negotiated, blind plea to the Possession charge. Judge Gillert was advised of the developments, including Petitioner's refusal to enter her plea according to the State's specifications, and her desire to enter a non-negotiated, blind plea to the Possession charge and a plea of *nolo contendere* to the Seatbelt charge. Petitioner appeared at the hearing prepared to enter her pleas, and with the appropriate form for entry of the pleas prepared for presentation to the court.

Judge Gillert refused to accept Petitioner's blind plea, advising her that she did not have a "unilateral right" to plead guilty, and ordered her to appear at trial on Monday, February 6, 2006. Petitioner appeared with counsel at the

assigned date and time, but the matter was passed until Tuesday, February 7, 2006, because counsel for Petitioner's co-defendant was unable to appear.

At the time Petitioner filed her writ with this Court, the District Court had not entered a written order commemorating its findings and rulings made February 3, 2006. Attached to Petitioner's application filed with this Court is a transcript of the hearing held February 3, 2006 wherein Judge Gillert refused to allow Petitioner to tender her plea.

Petitioner alleges that she has an "unfettered right" to enter a guilty plea to the Possession charge, and a plea of *nolo contendere* to the seatbelt charge. Petitioner alleges the trial court was without authority to refuse to accept her guilty plea, and requested this Court issue an order staying proceedings in this matter pending resolution of Petitioner's request for a Writ of Prohibition and/or Mandamus. Petitioner further requested this Court issue a Writ of Prohibition prohibiting and precluding Judge Gillert from forcing and requiring Petitioner to proceed to trial, and requested that this Court order Judge Gillert to accept Petitioner's blind and *nolo contendere* pleas to the pending charges against her as set forth in the Information filed in the District Court of Tulsa County, Case No. CF-2005-3056.

On February 7, 2006, this Court entered an order directing a response from the Honorable Thomas C. Gillert, District Judge, or his designated representative and staying proceedings in this matter. The Respondent was directed to respond to the Petitioner's writ filed with this Court, and was

specifically directed to address Petitioner's claim that the District Court cannot refuse to accept Petitioner's guilty plea to the Possession charge and Petitioner's plea of *nolo contendere* to the Seatbelt charge. On February 17, 2006, the State of Oklahoma, by and through Assistant District Attorney Julie C. Doss, filed a response with this Court. We now address Petitioner's request for relief.

The response filed in this matter includes a recitation of facts outlining defense counsel's role in representing both Petitioner and her co-defendant. The basic facts, as alleged in Petitioner's application filed with this Court, are not contested. Petitioner agreed to enter a plea, with a sentencing recommendation from the State. The State withdrew its plea offer when, according to the State, Petitioner "contested every material allegation [of the charges] except technical possession of methamphetamine". Petitioner then announced that she would enter her non-negotiated, blind guilty plea to the possession charge and a plea of *nolo contendere* to the seatbelt violation. The State agrees that the District Court would not accept Petitioner's pleas. On Monday, February 6, 2006, Petitioner again advised the District Court that she was prepared to proffer pleas by which she would accept all blame for the charged offenses, and, according to the State, "contesting all other facts that point any guilt toward the co-defendant, Mark McElroy".¹ There is nothing in the record presented to this Court showing that

¹ The record in this case contains no information regarding Petitioner's claims about the State's theory of its case, the allegations contained in the information or the guilt or innocence of her co-defendant. The record reflects only that Petitioner wishes to plead guilty to the possession charge as filed by the State.

Petitioner's plea was rejected for any reason other than the District Court determined she did not have the right to enter a guilty plea in this situation.

By way of argument, the State first claims Petitioner has failed to allege sufficient facts to allow this Court to assume jurisdiction of this matter because she is unable to show how she will be irreparably harmed if not allowed to enter a plea. In fact Petitioner might benefit from a jury trial, in the event the jury finds her not guilty. The worst that could happen, the State argues, is a finding of guilt.

For a writ of mandamus a petitioner has the burden of establishing (1) (s)he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. *See, Woolen v. Coffman*, 676 P.2d 1375, 1377 (Okla.Cr. 1984); Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006). For a writ of prohibition, Petitioner must establish (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006). We find that Petitioner has met these burdens, in part, and her requests for relief are **GRANTED IN PART** and **DENIED IN PART**.

Petitioner has established that she has a clear legal right to the relief requested, and that there is no other adequate relief available to her in this instance. The harm here is the trial court's refusal to accept Petitioner's plea, requiring her to proceed to trial when she has already confessed guilt, expressed her desire to enter a plea, and does not want to go to trial. Petitioner has a right to proceed to trial if she chooses, but she also has the right not to proceed to trial upon entry of a proper guilty plea and waiver of her right to trial. The State's claim that there is no harm in requiring Petitioner to proceed to trial is disingenuous, at best. To claim that Petitioner might actually benefit from a trial in the event she is found "not guilty" begs the question presented here. We find that forcing Petitioner to proceed to trial in this situation, regardless of the outcome, constitutes harm for which there is no other remedy.

Pursuant to 22 O.S. 2001 § 513, there are four kinds of pleas available for a defendant enter in response to an indictment or information:

1. Guilty
2. Not guilty
3. *Nolo Contendere*, **subject to the approval of the court** (*emphasis added*); and
4. A former judgment of conviction or acquittal of the offense charged, which must be specially pleaded, either with or without the plea of not guilty.

Pursuant to this statute, the only plea which requires prior approval of the court is a plea of *nolo contendere*. Since such a plea can only be made with approval of

the district court, the trial court's rejection of Petitioner's *nolo contendere* plea was proper. Petitioner's request that this Court order the District Court to accept her *nolo contendere* plea to the seatbelt violation is **DENIED**.

While we have addressed, on numerous occasions, defendants' rights upon entering a negotiated plea, or a plea of *nolo contendere*, and the trial court's duties and responsibilities in accepting the same, we find no Oklahoma cases addressing a defendant's right, and the trial court's corresponding duties and responsibilities, when a defendant enters a non-negotiated, blind plea. We find it was error for the District Court to unilaterally reject Petitioner's non-negotiated, blind, guilty plea.

In response to the Supreme Court's decision in *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.ed.2d 274 (1969), and to guarantee that an accused's plea of guilty is voluntary and intelligently entered, this Court, in *King v. State*, 1976 OK CR 103, 553 P.2d 529, set forth the minimum requirements which must be met for acceptance of a guilty plea. In discussing the *Santobello*² decision in *King*, this Court noted that plea discussions and

² *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). A review of the two most often cited Supreme Court cases addressing a defendant's right to have his/her guilty plea accepted provide little guidance in this particular circumstance, and are certainly not dispositive of the issue presented to this Court. See, *Lynch v. Overholser*, 369 U.S. 705, 82 S.Ct. 1063, 8 L.Ed.2d 211 (1962). In *Lynch*, the Supreme Court noted that a defendant's right to have his plea accepted was subject to the discretion of the trial court. However, this discretion was limited to the trial court's determination that the plea could be rejected if it did not meet the guidelines established in the Fed. Rule Crim. Proc. 11, and local court rules for acceptance of a plea. *Santobello* cited the *Lynch* decision for the proposition that the acceptance of a guilty plea was subject to "sound judicial discretion". Again, the exercise of sound judicial discretion in this case referred to the requirement that the acceptance of a guilty plea is subject to the requirements set forth at Fed. Rule Crim. Proc. 11. As noted in the explanatory paragraph in *Santobello*, the purpose of examining pleas before acceptance, most of which are negotiated, is to insure that the defendant is advised of his rights and that those rights are protected during the plea process. Neither of these cases

plea bargaining are appropriate tools in the administration of justice, but should not be hidden behind the in-court hearing where the accused feels he is expected to deny that any agreement or promise has been made. *King* at ¶ 9, 533 P.2d at 533. To insure that all parties understand the negotiated plea entered in a particular case, to assure the proper administration of justice, and to eliminate direct and collateral attacks upon convictions which are the result of guilty pleas, this Court established specific guidelines for trial courts to follow when accepting a defendant's plea. *Id.*, *King* at ¶ 12, 533 P.2d at 536.

The *King* guidelines address the procedure to be followed any time a defendant seeks to enter a guilty plea, whether negotiated or non-negotiated. After determining if the defendant is competent, and advising him/her of the nature and consequences of the guilty plea, the court must then determine whether or not the plea is being voluntarily entered. If the defendant tenders a non-negotiated, or "blind" plea, the following guidelines, as outlined in *King*, must be followed:

III. Determining the voluntariness of the plea of guilty;

A. The trial court shall make inquiry of the parties before the court as to whether or not the tendered plea of guilty is voluntary and not the result of force, threats or coercion. *If the court has any doubt in this regard, the tendered plea of guilty must be rejected.* (emphasis added).

stands for the proposition that a non-negotiated, blind plea, which meets statutory and case law requirements for entry of a guilty plea, can be unilaterally rejected by a trial judge.

B. The court shall next inquire as to whether or not the tendered plea of guilty is the result of a plea agreement.

1. If the court determines from the positive assertion of the District Attorney, or his assistant, and the defendant or the defendant and his counsel, if he is represented by counsel, that the tendered plea of guilty **is not the result of a plea agreement and determines from the defendant that there is a factual basis for the plea of guilty**, the court shall accept the plea of guilty and may proceed, in its discretion, as follows: (emphasis added)

At the appropriate time, pronounce judgment and sentence without dispositional recommendation from the prosecutor; or ask for such recommendation with the explicit understanding by all parties appearing that the final disposition of the case, pronouncement of judgment and sentence, will be the independent act or decision of the trial court alone.

King v. State, 1976 OK CR 103, ¶¶ 2 – 9, 553 P.2d 529, 535-536.

The *King* decision is quite clear. The only determination to be made by the trial court in evaluating a tendered, non-negotiated/blind plea for acceptance is whether the plea is voluntarily and intelligently entered, and whether a factual basis has been established to support the plea. If these criteria are met, the district court shall accept the plea. The district court has no discretion to unilaterally reject a non-negotiated, blind plea for any reason if the basic plea criteria set forth in *King* have been established. The court's discretion only comes into play once the non-negotiated, blind plea has been accepted.

The State argues that acceptance of the guilty plea is within the trial court's discretion, and claims that the circumstances of a particular case, to which the trial court is privy, require the trial court to be allowed to either accept or reject a defendant's guilty plea. The State cites no authority for this position,

claiming instead that the trial court is in a unique position to “see the intricacies involved in cases at this stage and to understand the intentions of defendants in such circumstances and the likely ramifications.” By way of explanation, the State argues that in this case, Petitioner contests nearly every material fact in the State’s evidence except for the fact that police found methamphetamine in her possession.³

Both Oklahoma case law and statute specifically allow for entry of a non-negotiated, blind guilty plea. Such a plea does not require approval of the court. The form of the plea requires only that the defendant plead guilty to the offense charged in the indictment or information. See, 22 O.S. § 513, 22 O.S. 2001 § 515(1), *King v. State*, 1976 OK CR 103, 553 P.2d 529. We find nothing in either of these statutes, or in the *King* guidelines, allowing for rejection of a tendered non-negotiated plea if the basic plea criteria are met. In short, a defendant has a unilateral right to enter a guilty plea, and to have that plea accepted if the appropriate statutory and case law requirements are met.

Here the District Court made no finding as to whether Petitioner’s plea was knowing and voluntary, and whether a factual basis existed for the plea, despite the fact that Petitioner’s prepared Plea of Guilty Summary of Facts was ready for

³ The State alleges the stop of Petitioner’s vehicle was based upon the seatbelt violation, and Petitioner denies the seatbelts were not fastened. Petitioner, according to the State, also denies that her co-defendant handed her the drugs in question, which “is at the core of the allegations by the State”. It is unclear from the State’s response if the allegation concerning the co-defendant handing the drugs to Petitioner serves as the basis for the allegations against Petitioner, against her co-defendant, or against both.

submission to the court, and she had acknowledged her desire to enter the guilty plea. The court simply refused to hear Petitioner's plea at all.

The State claims that the trial court stands in a unique position to evaluate the intricacies of a particular case and "understand the intentions of defendants". While that may or may not be true, we find nothing in the statute or case law allowing the District Court to reject a blind plea based on this knowledge or insight. There is no support for the State's claim that entry of a non-negotiated guilty plea, and its acceptance by the trial court, is dependent upon anything other than a defendant's knowing and voluntary entry of the plea, and the establishment of a factual basis for the same. We are sympathetic to the State's concern to prosecute those guilty of violating State laws. We also recognize the resulting benefits to the State when co-defendants assist in prosecuting cases by giving favorable testimony or providing pertinent information regarding the charged offenses. However, the fact that entry of a guilty plea by a charged co-defendant might make difficult or impossible the conviction of a co-defendant is not a factor in the first co-defendant's right to knowingly and voluntarily enter a blind guilty plea.

The State also argues that if Petitioner's argument is to be accepted, it must be believed that the District Court has no discretion, and is forced to accept any plea that appears to be knowing and voluntary. This, the State argues, would reduce the required statement of facts to a "hollow formality", and would require the District Court to accept a plea as long as the factual basis is

recited. The State argues this position reduces the District Court to the role of “useful idiot”, promoting the view that the judicial system is a “handmaiden in bullying litigants to achieve any resolution”.

As this Court has repeatedly stated when evaluating the validity of guilty pleas, we are concerned only with whether or not the plea was entered voluntarily and intelligently. *See, Hagar v. State*, 1999 OK CR 35, ¶ 4, 990 P.2d 897, 896; *Wester v. State*, 1988 OK CR 126, ¶ 2, 764 P.2d 884, 886; *Ocampo v. State*, 1989 OK CR 38, ¶ 3, 778 P.2d 920, 921-922; *Castro v. State*, 1994 OK CR 17, ¶ 6, 871 P.2d 433, 435; *Marshall v. State*, 1998 OK CR 30, (J. Lumpkin’s special concur, ¶ 5) 936 P.2d 1, 12; *Fields v. State*, 1996 OK CR 35, ¶ 28, 923 P.2d 624, 629-630. We have consistently refused to speculate when evaluating a defendant’s appeal, the ulterior motives that might have existed for the entry of a guilty plea, based upon a defendant’s hindsight claim that the outcome of the plea was not as expected. Once the basic plea criteria have been established, and the guidelines for accepting such a plea have been met, this Court has routinely rejected defendant claims for reconsideration of the entry of a guilty plea.⁴ As for the State’s claim that Petitioner, if allowed to enter such a plea, would almost certainly be allowed to withdraw it, we again point to our appellate decisions noting that if a plea is found to be knowing and

⁴ In refuting a defendant’s claim for review of his/her guilty plea on direct appeal, the State’s general response is that it is not within this Court’s purview to look beyond the facts established in the record for entry and acceptance of a guilty plea; the reasons for entry of the plea are irrelevant, as long as the plea was knowing and voluntary, and was supported by a factual basis. We find it interesting that this position is abandoned when the State finds it inconvenient for a plea to be accepted.

voluntary, and is accompanied by a factual basis, the defendant has no right to withdraw a properly entered guilty plea.

IT IS THEREFORE THE ORDER OF THIS COURT that the District Court of Tulsa County, the Honorable Tom Gillert, is directed to conduct a hearing on Petitioner's non-negotiated blind plea of guilty to the charged offense of Unlawful Possession of a Controlled Drug (Methamphetamine) in Case No. CF-2005-3056. The District Court is further directed to **ACCEPT** Petitioner's plea if it finds that the statutory rules and case law requirements established for entry of a proper guilty plea and proper waiver of her right to trial are met. Petitioner's request that the District Court be directed to accept her plea of *nolo contendere* to the charge of Driving Without a Seatbelt is **DENIED**. However, the District Court is directed to hear Petitioner's *nolo contendere* plea, on the record, and make its determination regarding the acceptance or rejection of that plea subject to the statutory rules and case law requirements established for entry of a plea of *nolo contendere*.

The Stay of Proceedings in this matter is hereby **LIFTED**.

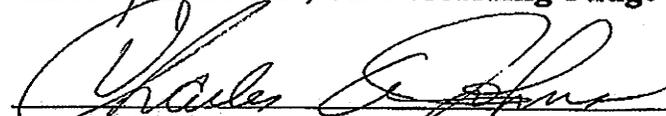
IT IS SO ORDERED.

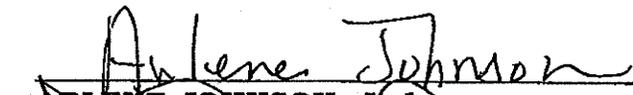
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 18th day of April, 2006.

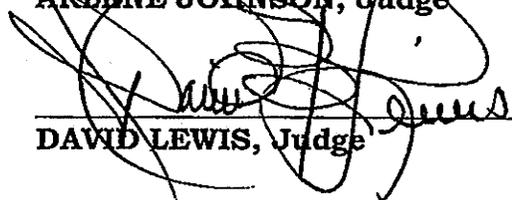


CHARLES S. CHAPEL, Presiding Judge

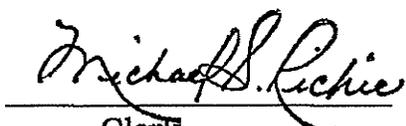

GARY L. LUMPKIN, Vice Presiding Judge *Concur in Part / Dissent*
Writing Attached


CHARLES A. JOHNSON, Judge


ARLENE JOHNSON, Judge


DAVID LEWIS, Judge

ATTEST:


Clerk

OA/F

LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I dissent to this Court's order directing the District Court to accept Petitioner's guilty plea to the charge of Unlawful Possession of a Controlled Drug, Case No. CF-2005-3056. Petitioner has not shown a writ of mandamus/prohibition is the only adequate relief. Challenges to rejected offers to plead guilty are usually raised on direct appeal. See *Ryder v. State*, 2004 OK CR 2, ¶¶ 17-25, 83 P.3d 856, 862-864; *Ross v. State*, 1986 OK CR 49, ¶ 16, 717 P.2d 117, 122; *Gray v. State*, 1982 OK CR 137, ¶¶ 6-16, 650 P.2d 880, 882-884; *Stewart v. State*, 1977 OK CR 265, ¶ 6-8, 568 P.2d 1297, 1300.

Further, determining at this stage of the proceedings that forcing Petitioner to trial constitutes harm is premature as she might be found not guilty. Therefore, it is not appropriate for this Court to issue a writ at this time.

Additionally, this Court has repeatedly held there is no absolute right to have a guilty plea accepted. *Ross*, 1986 OK CR 49 at ¶ 16, 717 P.2d at 122 citing *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). See also *State ex rel. Stout v. Craytor*, 1988 OK CR 79, ¶¶ 12-13, 753 P.2d 1365, 1368; *Stewart v. State*, 1977 OK CR 265 at ¶ 6, 568 P.2d at 1300 citing *Lynch v. Overholser*, 369 U.S. 705, 82 S.Ct. 1063, 8 L.Ed.2d 211 (1962). Although the *Santobello* Court relied in part on Fed. Rule Crim. Proc. 11, the

Supreme Court concluded, “[a] court may reject a plea in exercise of sound judicial discretion”. 404 U.S. at 262, 92 S.Ct. at 498.

This Court has previously recognized that *King v. State*, 1976 OK CR 103, ¶ 11, 553 P.2d 529, 534, dictates the minimum requirements which must be met before the trial court **may** accept a guilty or *nolo contendere* plea from a defendant. See *Wester v. State*, 1988 OK CR 126, ¶ 3, 764 P.2d 884, 885 (emphasis added). Therefore, the trial court is never obligated to accept a proffered plea of guilty or *nolo contendere*, but has the discretion to determine whether or not to accept the plea.

Further, the State as well as the defense has the right to a jury trial. While this issue has not been addressed by this Court recently, we have previously found the right to a jury trial is not solely the right of the criminal defendant. In *Mougell v. State*, 97 Okla.Crim. 180, 260 P.2d 447, 451 (1953) this Court said “in order for the waiver of a jury to be effective both parties, the state and the defendant as well, must waive the right”, citing to *Morrison v. State*, 31 Okla.Crim. 11, 236 P. 901. “The right to trial by jury whatever reason for it cannot be arbitrarily taken away by the judge. It can only be dispensed with by the voluntary consent or waiver of the accused and the state”. *Id.* This Court also stated:

In *State v. McDonald*, 10 Okl.Cr. 413, 137 P. 362, 363, it was said: 'It is true that our Constitution provides that the right of a trial by jury shall be inviolate, and we are of the opinion that the state as well as the defendant has the right to a trial by jury as to all controverted questions of fact, and that the court cannot proceed with such a trial without the consent of both parties. *Dalton v. State*, 6 Okl.Cr. 85, 116 P. 954.

260 P.2d at 452.

In *Morrison v. State*, 31 Okla.Crim. 11, 236 P. 901 (1925) cited in *Mougell*, this Court said:

The right is not given to a defendant to elect whether he will be tried by the court or by a jury. The state is entitled to a jury, although the defendant may expressly waive a jury. The Constitution (section 20, art. 7), contemplates that in order for a waiver to be effective both parties should waive the right to have the issues of fact determined by a jury. *Cowden v. State*, supra;

236 P. 901.

Based upon the foregoing, Judge Gillert correctly ruled that Petitioner did not have a "unilateral right to plead guilty" and therefore deny the State its right to a jury trial.

Accordingly, I dissent to this Court's finding that the District Court was required to accept the guilty plea to the possession of CDS charge. I agree, but not for the reasons stated in the Order, that Petitioner's request that the District Court be ordered to accept her *nolo contendere* to the seatbeat violation should be denied.

I would therefore order the stay of proceedings lifted and let the trial proceed pursuant to Judge Gillert's correct application of the law.

