



We reverse the order adjudicating D.S.C. as a delinquent child and remand the matter to the District Court.

D.S.C. argues that the waiver of jury trial in this case was premised upon the State's offer allowing him to enter and complete a sex offender program. He did not get into any program and therefore could not fulfill his portion of the bargain; hence he could not compel the State to perform their portion of the bargain: dismissal of the petition and re-filing of the case as a non-sex offender registration offense. He points out, correctly, that the State did get the benefit it bargained for (his waiver of jury trial) and that since the plea agreement was never consummated, his right to a jury trial must be restored. We agree.

Section 2-2-401 of Title 10A directs that in adjudicatory hearings to determine if a child is delinquent or in need of supervision, the State or any person entitled to service of summons shall have the right to demand a trial by jury that must be granted as in other cases unless waived. We find that the trial court's refusal to grant D.S.C. a jury trial in this case after the parties' agreement failed was an abuse of discretion. Once the agreement of the parties failed, the case stood as if no such agreement had ever existed. The waiver of jury trial, an essential part of the agreement, was a nullity and not binding upon D.S.C. See *Staley v. State*, 1938 OK CR 116, 65 Okl.Cr. 227, 236-238, 84 P.2d 813, 817-818.

Finding merit to D.S.C.'s first proposition of error, we do not find it necessary to address the remaining proposition of error.

**DECISION**

The order of the District Court of McCurtain County adjudicating Appellant as a Delinquent Child in Case No. JDL-2012-40 is **REVERSED and REMANDED for further proceedings consistent with this Opinion.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF MCCURTAIN COUNTY  
THE HONORABLE MICHAEL DEBERRY, DISTRICT JUDGE**

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**OPINION BY: JOHNSON, J.**

LEWIS, P.J.: Concur  
SMITH, V.P.J.: Concur  
LUMPKIN, J.: Concur

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