

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

CHRISTOPHER MARCUS HAYES, )  
 )  
 Petitioner, )  
 )  
 -vs- )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

NOT FOR PUBLICATION

No. C-2003-983

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

SEP - 9 2004

**SUMMARY OPINION**  
**GRANTING PETITION FOR WRIT OF CERTIORARI**

MICHAEL S. RICHIE  
CLERK

**STRUBHAR, JUDGE:**

Christopher Marcus Hayes, hereinafter Petitioner, was charged with Conspiracy to Manufacture Methamphetamine in the District Court of Garvin County, Case No.CF-2000-280. On August 31, 2001, the District Court of Cleveland County accepted jurisdiction of the matter after Petitioner waived venue. The Honorable Tom A. Lucas accepted Petitioner’s plea of guilty to an amended charge of Conspiracy to Possess Methamphetamine and placed Petitioner in the Cleveland County Drug Court, Drug Court Case No. DC-2000-24. Following Petitioner’s non-compliance with the drug court program, the State filed a motion to terminate Petitioner from the Cleveland County Drug Court Program. In response, Petitioner filed his Confession of State’s Motion to Terminate and Defendant’s Application to Withdraw Plea of Guilty. At a hearing on the matter, the trial court terminated Petitioner from the Cleveland

County Drug Court, sentenced Petitioner to five years imprisonment and denied Petitioner's application to withdraw his plea of guilty. From the district court's order denying his motion to withdraw guilty plea, Petitioner seeks a Writ of Certiorari.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of Petitioner and Respondent, we grant the petition for a writ of certiorari. In reaching our decision we considered the following proposition of error:

- I. The Petitioner's plea of guilty was not voluntarily and intelligently entered.

In reviewing the validity of a guilty plea, we review the entire record to determine if the plea was entered voluntarily and intelligently, *i.e.*, whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hagar v. State*, 990 P.2d 894, 896 (Okla.Cr.1999). To ensure that a guilty plea is being entered intelligently, the trial court must obtain a factual basis for the plea. *Id.* "The factual basis of the plea must be sufficient to provide a means by which the judge can test whether the plea is being entered intelligently." *Id.* at 897.

After reviewing the entire record, we find that the factual basis provided on the Summary of Facts Form does not constitute an admission of guilt to the original or amended crime charged. Unfortunately, there is nothing else in the

record to review to buttress the factual basis on the Summary of Facts form as Petitioner did not have a preliminary hearing and waived the court reporter at the plea hearing. Although the State alluded to the fact at the motion to withdraw hearing that it could call Petitioner's former defense attorney at the time he entered his plea to testify about the plea negotiations, no testimony was presented at the hearing, only argument. Because the factual basis is insufficient to support a finding that the plea was entered intelligently, we must grant the writ and allow Petitioner to withdraw his plea.

### **DECISION**

The Judgment and Sentence of the trial court is **REVERSED** and the petition for a writ of certiorari is **GRANTED**.

#### **APPEARANCES AT TRIAL**

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**OPINION BY: STRUBHAR, J.**

JOHNSON, P.J.: CONCUR  
LILE, V.P.J.: DISSENT  
LUMPKIN, J.: CONCUR  
CHAPEL, J.: CONCUR

RB