



Wilkes argues that, because his plea was predicated on acceptance into the Delayed Sentencing Program for Young Adults, when he was not accepted into that program, he should have been allowed to withdraw his plea. We review a district court's decision to deny a motion to withdraw plea for abuse of discretion. *Cox v. State*, 2006 OK CR 51, ¶ 18, 152 P.3d 244, 251. Our review is limited to whether the guilty plea was made knowingly and voluntarily, and whether the district court accepting the guilty plea had jurisdiction to accept the plea. *Lewis v. State*, 2009 OK CR 30, ¶ 4, 220 P.3d 1140, 1142.

This case arrives here through scrivener's error, compounded by the failure of all parties to recognize that error and its consequences when the error was discovered. This was a hybrid plea – described as a blind plea on the paperwork, but facilitated by negotiation with the State to dismiss the rape by instrumentation charge. The record reflects that the clear intention of all parties and the trial court, when Wilkes entered his plea, was that he be allowed to enter the Delayed Sentencing Program for Young Adults. Only after he had an opportunity to participate in that program would the trial court review the case and enter a sentence. When Wilkes was rejected for the delayed sentencing program, the explicit terms of his no contest plea were altered.

Wilkes's guilty plea form, which provides a complete record of the plea for appellate review, shows that he pled to one count of second degree rape. *Shepherd v. State*, 1996 OK CR 27, ¶ 6, 920 P.2d 1066, 1067; *Lozoya v. State*, 1996 OK CR

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<sup>2</sup> Due to the unusual nature of the case, and the clear procedural error involved, this Court did not ask the State to file an answer brief.

55, ¶ 38, 932 P.2d 22, 33. The paperwork (the court minute on the docket and the trial court's order committing Wilkes to the delayed sentencing program) inaccurately reflected that Wilkes also pled to a count of second degree rape by instrumentation. This charge was dropped precisely because it would make him ineligible for the delayed sentencing program, which is exactly what happened when the Department of Corrections saw it on the paperwork. This was clearly reflected in the Department of Corrections letter to the court rejecting Wilkes, which stated as the reason for denial "Crime; rape by instrumentation." The case was sent for sentencing in the District Court. At that point, the appropriate remedy would have been to correct the paperwork and resubmit it to DOC, in accordance with the trial court's original order. Instead, the case was set for sentencing and passed for three months. No evidence was presented by either party at the November 10, 2010 hearing on Wilkes's motion to withdraw his plea; all parties treated the hearing as a step in the process for preserving appellate remedies. At that hearing, nobody mentioned the serious error in the paperwork which had prompted the Department of Corrections to reject Wilkes and led to the failure of the plea.

The error in this case was further compounded at sentencing. At that time, the trial court recognized the paperwork inaccurately reflected that Wilkes had pled to a charge of second degree rape by instrumentation. The court ordered that the record reflect that charge had been dismissed on July 1, 2010. Wilkes had not yet been sentenced, the original order committing him to the delayed sentencing program still stood, and the only reason he had

committed to the delayed sentencing program. At that point, the trial court should have allowed Wilkes to withdraw his plea. Instead, the trial court sentenced Wilkes to ten years in prison.

Plea bargaining “is an essential component of the administration of justice.” *Jiminez v State*, 2006 OK CR 43, ¶ 6, 144 P.3d 903, 905. If a defendant enters a plea in expectation of some agreed sentence, or predicated on a particular agreed condition, that promise should be kept. *Santobello v. New York*, 404 U.S. 257, 262-63, 92 S.Ct. 495, 499, 30 L.Ed.2d 427 (1971); *Couch v. State*, 1991 OK CR 67, ¶ 6, 814 P.2d 1045, 1047 (defendant must be allowed to withdraw plea where trial court accepted plea agreement but imposed different sentence). The United States Supreme Court has referred to this as “the commonsense notion that a defendant can no longer be bound by an agreement that the court has refused to sanction.” *U.S. v. Hyde*, 520 U.S. 670, 676, 117 S.Ct. 1630, 1633, 137 L.Ed.2d 935 (1997). The prosecutor promised to dismiss the rape by instrumentation count, and did so. This made Wilkes eligible for commitment to the delayed sentencing program. He entered a no contest plea to second degree rape, expecting to be committed to that program, and to have his sentencing deferred for six months. That also occurred. This plea was knowing and voluntary, predicated on that condition. *Lewis*, 2009 OK CR 30, ¶ 4, 220 P.3d at 1142; *King v. State*, 1976 OK CR 103, ¶ 11, 553 P.2d 529, 532-33. A scrivener’s error caused the terms of the plea to be unfulfilled. Although the error was corrected at sentencing, Wilkes neither received the benefit for which he had bargained, nor was allowed to withdraw his plea.

Wilkes entered a plea with the understanding that he was eligible for the delayed sentencing program and would be committed to it, and his sentencing would be deferred. Through no fault of his own, Wilkes was erroneously found ineligible for that program. The record shows that Wilkes maintained his innocence throughout the proceedings and pled no contest only under the conditions stated. The only remedy available in this Court is to grant the petition, allow Wilkes to withdraw his plea, and place both parties in the same position they were prior to the entry of the plea. *Couch*, 1991 OK CR 67, ¶ 7, 814 P.2d at 1047.

### **DECISION**

The Petition for Writ of Certiorari is **GRANTED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2011), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
THE HONORABLE KURT G. GLASSCO, DISTRICT JUDGE

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#### **OPINION BY: SMITH, J.**

A. JOHNSON, P.J.:	CONCUR
LEWIS, V.P.J.:	CONCUR
LUMPKIN, J.:	CONCUR IN RESULTS
C. JOHNSON, J.:	CONCUR

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NO RESPONSE REQUIRED