

JAN 24 2000

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA  
JAMES W. PATTERSON  
CLERK

VAL EALEY, )  
)  
Petitioner, )  
)  
-vs- )  
)  
STATE OF OKLAHOMA, )  
)  
Respondent. )

NOT FOR PUBLICATION

No. C-99-722

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

**STRUBHAR, PRESIDING JUDGE:**

Val Ealey, hereinafter Petitioner, entered a plea of nolo contendere to one count of Possession of a Controlled Dangerous Substance (63 O.S.Supp.1995, § 2-402), in the District Court of Tulsa County, Case No. CF-98-3899, before the Honorable B. R. Beasley, Associate District Judge. The trial court sentenced Petitioner to three (3) years imprisonment and a \$500.00 fine. Petitioner filed a motion to withdraw plea of no contest which was overruled. From the denial of Petitioner's motion to withdraw 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 both parties, we find the Writ should be issued. In reaching our decision, we find the following proposition of error requires relief under the law and the evidence:

- I. Petitioner's plea was not knowing and voluntary when conditioned upon an erroneous promise from the judge and counsel that Petitioner could appeal the district court's unfavorable ruling on his motion to suppress.

As to the sole proposition, we find Petitioner's plea was not knowingly and voluntarily entered because it was premised on the belief that Petitioner would be able to appeal the district court's unfavorable ruling on his motion to suppress. *See Lozoya v. State*, 932 P.2d 22, 30-31 (Okl.Cr.1996)(holding the entry of a guilty plea waives a petitioner's right to contest the legality of a search and seizure on appeal) Because both the trial court's and defense counsel's erroneous advice formed the basis for Petitioner's decision to plea, we find the misinformation renders the plea involuntary.

#### **DECISION**

The petition for a writ of certiorari is **GRANTED** and the decision of the trial court denying Petitioner's application to withdraw his nolo contendere plea is **REVERSED** and the cause **REMANDED**.

**APPEARANCES AT TRIAL**

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**OPINION BY: STRUBHAR, P.J.**

LUMPKIN, V.P.J.: CONCUR  
JOHNSON, J.: CONCUR  
CHAPEL, J.: CONCUR  
LILE, J.: CONCUR IN RESULT

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