

FILED  
 IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA  
 AUG - 5 1999  
 JAMES W. PATTERSON  
 CLERK

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

LEE ANN ETCHIESON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
 Case No. C-98-1242

**SUMMARY OPINION GRANTING CERTIORARI**

**LILE, JUDGE:**

Appellant was charged with Count I-Assault and Battery and Count II-Malicious Injury to Property in the District Court of McIntosh County, Case No. CM-98-8. Appellant entered pleas of *nolo contendere* to both counts on September 11, 1998. Appellant was sentenced, pursuant to an agreed recommendation of the District Attorney, to a 90 day suspended sentence and a \$100 fine on Count I and she received an 18 month deferred imposition of judgment and sentences and was ordered to pay \$728.63 restitution on Count II. Because the Court made no pronouncement at sentencing the counts were consecutive. Appellant filed a timely motion to withdraw her pleas which, after hearing, was denied by the Honorable Associate District Judge Mowery on October 20, 1998. Appellant has filed her Petition for Writ of Certiorari requesting that this Court order that Appellant be allowed to withdraw her pleas.

Appellant raises the following propositions of error in support of her petition:

1. THE TRIAL COURT FAILED TO COMPLY WITH EVEN THE MINIMAL REQUIREMENTS FOR ACCEPTANCE OF A PLEA OF NO CONTEST.

Appellant raised some issues in her Petition for Certiorari which were not raised in her Motion to Withdraw Plea and which are deemed waived pursuant to Rule 4.2 (B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (1998); of the remaining issues set forth in the Petition for Writ of Certiorari, only the proposition above is briefed; therefore the others are waived, *Webb v. State*, 1988 OK CR 119, 765 P.2d 785.

After a thorough consideration of the above proposition and the entire record before us, including the original record, transcripts, and the brief of Appellant we have determined that Appellant positively asserts that she was not advised of the range of punishment for each of the counts and nothing in the record indicates that she was. In *King v. State*, 1976 OK CR 103, 553 P.2d 529, this court advised trial judges that they must advise the defendant of the range of punishment prior to accepting a plea of guilty or no contest.

Therefore Appellant will be allowed to withdraw her plea of guilt to both counts and proceed on pleas of not guilty. The trial court is referred to Rule 4.1 of our *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (1998), which encourages use of a simplified plea form which would help prevent situations such as this.

**DECISION**

The Judgment and Sentence of the trial court is **REVERSED**.

**ATTORNEYS AT TRIAL**

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ASSISTANT DISTRICT ATTORNEY  
McINTOSH COUNTY  
COURTHOUSE  
EUFAULA, OK 74432  
ATTORNEY FOR STATE

**OPINION BY: LILE, J.**

**STRUBHAR, P.J.: CONCURS**  
**LUMPKIN, V.P.J.: CONCURS**  
**JOHNSON, J.: CONCURS**  
**CHAPEL, J.: CONCURS**

**RC**

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**NO RESPONSE NECESSARY**