

FILED
 IN COURT OF CRIMINAL APPEALS
 STATE OF OKLAHOMA

 JUL 26 1999
 JAMES W. PATTERSON
 CLERK

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JAMES KEVIN KOLANDER,)
)
 Petitioner,)
)
 -vs-)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

NOT FOR PUBLICATION

 No. C-98-871

SUMMARY OPINION GRANTING
WRIT OF CERTIORARI

STRUBHAR, PRESIDING JUDGE:

James Kevin Kolander, hereinafter Petitioner, entered a plea of guilty to two counts of Concealing Stolen Property (21 O.S.1991, § 1713) and one count of Escape from a Penal Institution (21 O.S.Supp.1994, § 443), in the District Court of Seminole County, Case Nos. CF-97-291, CF-97-304 and CF-97-305, the Honorable Joseph F. Wrigley presiding. After failing to complete the court ordered Regimented Inmate Discipline Program, the trial court sentenced Petitioner to five (5) years imprisonment on each count and ordered the sentences to be served consecutively. Petitioner filed a timely application to withdraw his guilty pleas which was denied by the district court. From the district court's denial of his application to withdraw his plea, Petitioner seeks a Writ of Certiorari. The State confesses error and we find the Writ should be GRANTED.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse the

district court's denial of Petitioner's application to withdraw his guilty plea and issue the Writ of Certiorari. In reaching our decision we considered the following proposition of error and determined that reversal of the district court's ruling was required under the law and the evidence:

- I. Because Mr. Kolander was not certified to stand trial as an adult on these charges, the trial court did not have jurisdiction to accept Mr. Kolander's plea.

In the instant case the State never sought to certify seventeen year old Petitioner as an adult. Rather, the State relied on a prior adjudication to prosecute Petitioner as an adult. Title 10 O.S.Supp.1997, § 7303-4.3 (D) provides:

Any child who has been certified to stand trial as an adult pursuant to any certification procedure provided by law, or who has been tried as an adult pursuant to any reverse certification procedure provided by law, and is subsequently convicted of the alleged offense, or against whom the imposition of judgment and sentencing has been deferred, shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court or be eligible to be tried as a youthful offender in any further proceedings.

In this case, there was evidence before the preliminary hearing magistrate that Petitioner had been certified as an adult in Pottawatomie County on September 23, 1997, but no evidence that Petitioner had been convicted or had a deferred sentence imposed. As such the trial court could not rely on the prior

adjudication to retain jurisdiction of Petitioner and accept his subsequent plea.
A.T., Jr. v. State, 773 P.3d 755, 756 (Okl.Cr.1989).

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, P.J.

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

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