



IN THE DISTRICT COURT OF GARFIELD COUNTY STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

vs.

Case No. CF-2024-111

BRIAN LOVELL,

Defendant.

FILED  
GARFIELD COUNTY, OKLA

AUG 01 2025

DANIELLE M. SHARP  
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BY *[Signature]*  
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**STATES RESPONSE TO DEFENDANT'S MOTION TO COMPEL THE ENFORCEMENT OF THE DEFERRED PROSECUTION AGREEMENT ENTERED INTO APRIL 17, 2025, BETWEEN THE ATTORNEY GENERAL, THE HON. GENTNER DRUMMOND AND DEFENSE COUNSEL, STEPHEN JONES**

COMES NOW, the State of Oklahoma by and through Colleen L. Galaviz, Assistant Attorney General, State of Oklahoma in response to the Defendant's Motion. Defendants' motion should be denied.

The Defendant was charged by indictment for Count 1: Use of a Vehicle to Facilitate the Discharge of a Firearm or, in the alternative, Count 2: Discharging a Firearm at or into a Dwelling. On October 8, 2024, the Defendant filed a notice of intent to raise mental illness at trial. This case is currently set for Jury Trial September 22, 2025. During the pendency of the case, the parties engaged in discussions regarding potential resolution of the case, essentially plea negotiations. However, no actual agreement has been entered into or executed by the parties.

The decision to prosecute and what charges to bring rests solely with the State. *State ex rel Stout v. Craytor*, 753 P.2d 1365 (Okla. Crim. App. 1988). The State may offer plea deals or pursue deferred prosecution agreements at its discretion but is never under legal obligation to bargain with

any defendant. There is no constitutional right to plea negotiations. *Weatherford v. Bursey*, 429 U.S. 545 (1977). Any discussions regarding the disposition of a case between the parties are part of routine plea negotiations; they are not binding agreements. “A plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court does not deprive an accused of liberty or any other constitutionally protected interest.” *Mabry v. Johnson*, 467 U.S. 504, 507-(1984).

Plea bargaining is a matter of prosecutorial discretion, not a binding contract. A plea agreement is unenforceable unless and until (1) the court accepts a guilty plea or (2) the defendant proves clear, detrimental reliance upon an accepted plea agreement. *See Ross v. State*, 1986 OK CR 49, ¶16, 717 P.2d 117, 122 (rejecting challenge to trial court’s denial of defendant’s motion to enforce a plea agreement that had been withdrawn by the state after acceptance by the defendant, because no prejudice was shown). Neither has occurred here. No rights have vested, and no detrimental reliance has occurred.

The defendant cites a phone call on April 17, 2025, between Attorney General Gentner Drummond and defense attorney, Stephen Jones. That exchange was—at most—a discussion regarding a possible resolution of the case, not an enforceable contract.

A contract requires that the parties be capable of contracting, mutual consent must be given, it must be for a lawful object, and sufficient cause or consideration must be tendered by the parties. 15 O.S. §2. The defendant fails to demonstrate the essential elements of a contract have been met in this case.

First, it is unclear whether the Defendant has the ability to contract given the claim made by defendant regarding his medical and mental condition. The defendant has filed a notice of intent to claim mental illness in this case. His attorney has made multiple representations through his

pleadings and to the State that the defendant has been diagnosed with Major Frontotemporal Neurocognitive Disorder. Thus, it is questionable whether his client is of sound mind to enter into any type of contract or plea agreement. An individual without understanding has no power to contract. 15 O.S. §22. Even if an individual has some understanding but is mentally impaired, a contract may nevertheless be void. A party entering into a contract must comprehend, in a reasonable manner, the nature and the effect of the act in which he engaged and the business he transacted. *Evans v. First Nat. Bank of Stillwater*, 146 P.2d 111 (Okla. 1944).

A contract further requires a “meeting of the minds on all essential contract terms.” *Sticelber v. Iglehart*, 1934 OK 637, ¶ 9, 37 P.2d 638, 630 (finding no valid contract where the parties did not mutually assent to all the terms). Affidavits provided by the defense document that a discussion concerning a possible resolution of the case took place between the attorneys on April 17, but the defense proffers nothing to support mutual consent to an agreement was given. *See* 15 O.S. § 2(2). “[T]he consent of the parties must be mutual, and consent is not mutual unless the parties agree on the same thing at the same time.” *Smalley v. Bond*, 1923 OK 567, ¶ 12, 218 P.513, 515. Where there is no consent there is no contract. 22 O.S. 305.2 (A), allows a deferred prosecution agreement once it is determined the accused qualifies for one....and agrees to fulfill conditions which the accused and the State of Oklahoma may agree including but not limited to restitution and community services. The parties had not discussed the terms of the deferred prosecution agreement and finalized the requirements. The parties did not mutually assent to all the terms of the agreement.

Even assuming *arguendo* the parties had come to a meeting of the minds, the defendant cites no authority which would entitle him to specific performance of an agreement in the absence of consideration or waiver of any rights. On the contrary, criminal defendants generally have no

right to enforcement of plea bargains prior to acceptance of a plea or other detrimental reliance. *See, e.g., Mabry v. Johnson*, 467 U.S. 504, 507 (1984) (“A plea bargain, standing alone, is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest.”); *Ross v. State*, 1986 OK CR 49, ¶ 16, 717 P.2d 117, 122 (rejecting challenge to trial court’s denial of defendant’s motion to enforce a plea agreement that had been withdrawn by the State after acceptance by the defendant, particularly where no prejudice shown); *State ex rel. Stout v. Craytor*, 1988 OK CR 79, ¶ 14, 753 P.2d 1365, 1368 (finding that because the defendant had no right to acceptance of a guilty plea or to plea bargain, “and insofar as the matter of plea bargaining is a discretionary matter with the prosecutor. . . the [trial court] abused his discretion in directing the district attorney to file an amended information and directing him to accept the plea bargain.”); *United States v. Novosel*, 481 F.3d 1288, 1294 (10th Cir. 2007) (government not bound by terms of signed plea agreement where defendant had not yet entered guilty plea and failed to demonstrate detrimental reliance on the agreement); *Hampton v. Blalock*, No. PR-2007-0507, \*4 (Okl. Cr. September 6, 2007) (not for publication)<sup>1</sup>.

Consideration is an essential element of a contract. 15 O.S. § 2(4). Section 305.2 of Title 22 enumerates the specific consideration by an accused necessary for formation of a deferred prosecution agreement. 22 O.S. § 305.2(A) (requiring as consideration for a deferred prosecution agreement the defendant’s “waive[r of] any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agree[ment] to fulfill such conditions to which the accused and the State of Oklahoma may agree. . . .”). The defendant has tendered no such consideration in this case.

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<sup>1</sup> Attached hereto as State’s Exhibit 1. Though not binding on this Court, the State submits this unpublished order as persuasive authority bearing more directly on the issue at bar than any published opinion. *See* Rule 3.5(C)(3), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025).

Indeed, he has not yet given up *any* rights afforded to him.. Therefore, even under ordinary principles of contract law, a valid contract has never been formed. *See Louthan v. Johnson*, 239 P. 173 (1925) (holding that a promise made without supporting consideration is unenforceable). Similar to plea agreements, that are not enforceable unless accepted by the court or the defendant proves detrimental reliance. *Puckett v. United States*, 556 U.S. 129 (2009), (without a plea or reliance, there is nothing to enforce).

Here, no detrimental reliance has been shown, and the defendant has not given up any rights afforded to him as part of any agreement. Until the defendant has given up his constitutional rights afforded to him, in exchange for the execution of a deferred prosecution agreement, he has no constitutional right to have it enforced.

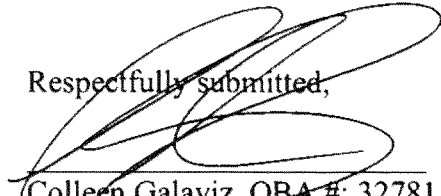
The defendant has failed to show that he has met all the elements of an enforceable contract, because a contract had not been entered. The discussion between the parties was a routine conversation between prosecutors and defense attorneys—no resolution or agreement had been entered into.

The authority to enter into a deferred prosecution agreement lies exclusively with the prosecutor and is dependent on prosecutorial discretion. *See Woodward v. Morrissey*, 991 P.2d 1042 (Okla. Crim. App. 1999) (prosecutorial discretion is constitutionally protected and courts lack the authority to interfere with decisions regarding prosecution or plea bargaining). Where neither party fulfills their obligation, no agreement can be enforced. *Nolan v. Henshaw*, 681 P.2d 1118 (Okla. Crim. App. 1984) (holding that a defendant could invoke an agreement to prevent subsequent prosecution for the same charge when he has performed his part of the agreement in good faith). Here, no agreement on the conditions of the deferred prosecution agreement has been

agreed to or entered into, there is nothing for the defendant to act on or perform, and hence, no agreement for this court to enforce.

WHEREFORE, the State of Oklahoma respectfully requests that Defendant's Motion be denied.

Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Motion to Compel was hand-delivered or mailed on the date of filing to:

Stephen Jones  
214-A N Independence  
P.O. Box 472  
Enid, OK 73701  
*Attorney for Defendant*



Colleen L. Galaviz, AAG