


IN THE COURT OF APPEALS OF THE CHOCTAW NATION
OF OKLAHOMA

MAR 16 2022

CHOCTAW NATION OF OKLAHOMA,

PLAINTIFF,

COURT CLERK
BY 

vs.

DISTRICT COURT NO. CG-21-196
APPELLATE COURT NO. ACC-21-1

STEVEN DANIEL HOLMES,

DEFENDANT.

ORDER DISMISSING APPEAL

The Defendant, STEVEN DANIEL HOLMES, entered his plea of nolo contendere to the charge of Grand Larceny in House or Vessel, a violation of *C.N.C.C., Section 1701(1)* on the 23rd of September, 2021. The defendant filed his motion to withdraw his plea of nolo contendere on the 4th day of October 4, 2021. The court set the motion to withdraw the plea on the 5th day of November, 2021.¹ After a hearing, the trial court denied the motion to withdraw the plea of nolo contendere by the defendant on November 5, 2021. Notice of intent to appeal was filed timely by the Defendant on November 15, 2021.

The notice of intent to appeal stated that the appeal was a direct felony appeal. The record clearly shows that this is an appeal from a plea of guilty/nolo contendere and a motion denying the withdrawal of the plea. The only method to appeal this type of proceeding is by petition for writ of certiorari. *C.N.C.P., Section 1051*. Since the substance of the appeal is clearly an appeal from a plea of guilty/nolo contendere, the error of mislabeling the appeal may be disregarded by this court as an informality. *C.N.C.P. Section 1069*.

¹ This hearing to set motion to withdraw plea was outside the thirty day requirement, *Rule 4.2(B), Rules of the Choctaw Appeals Court*. There was no prejudice to this late setting, and is not error. However the time limits set by our Tribal Council should be followed by our judiciary.

Section 1051(A) mandates that the petition for certiorari must be filed within ninety (90) days from the date of said conviction. *Section 1051(B)* provides that the Court of Appeals shall provide the procedure for filing of an appeal by court rules that have the force of statute. *Section IV, Appendix: Rules of the Court of Appeals in Criminal Cases* is the appropriate section for certiorari appeals. *Rule 4.3, Section IV, Appendix: Rules of the Court of Appeals in Criminal Cases*, provides the following, “The filing of the petition for writ of certiorari is jurisdictional and failure to timely file constitutes waiver of the right to appeal”. The Petition for writ of certiorari should have been filed by the 22nd day of December, 2021, 90 days after the conviction pursuant to the plea of guilty/nolo contendere entered on the 23rd day of September, 2021. A search of the record reveals that no such petition for writ of certiorari has been filed in this case.

Accordingly this appeal is hereby dismissed for lack of jurisdiction since the defendant has not timely filed a petition for writ of certiorari.

ALL JUSTICES CONCUR.