

IN THE DISTRICT COURT IN AND FOR PITTSBURG COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM HARBERT LAYDEN, JR.)
 Defendant.)

Case No. CF-2011-347

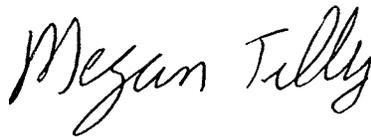
MOTION TO DISMISS WITHOUT PREJUDICE AT STATE'S COST

COMES NOW the State of Oklahoma, by and through its duly elected and acting Attorney General E. Scott Pruitt, by and through Assistant Attorney Megan Tilly, in and for Pittsburg County, State of Oklahoma, and moves this Court to dismiss the above entitled cause without prejudice, at the cost of the State, pursuant to the terms of a *Deferred Prosecution Agreement*, attached herein as State's Ex. A.

WHEREFORE, the State of Oklahoma moves this court to dismiss at the State's cost the above entitled cause without prejudice, to the refilling of the same.

Respectfully submitted,

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



MEGAN B. TILLY (OBA # 22655)
ASSISTANT ATTORNEY GENERAL
Chief, Multicounty Grand Jury Unit
Attorney General Building
313 N.E. 21st Street
Oklahoma City, OK 73105
voice: (405) 521-2975
fax: (405) 522-2795
ATTORNEY FOR STATE

CERTIFICATE OF DELIVERY

I hereby certify that on the ___st day of January, 2013 I mailed a true and correct copy of the above and foregoing *Motion to Dismiss Without Prejudice* to: Robert R. Nigh, Jr. Brewster & De Angelis, P.L.L.C., 2617 E 21st St, Tulsa, OK 74114, Attorney for William Harbert Layden, Jr.

SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

by:

A handwritten signature in cursive script that reads "Megan Tilly".

MEGAN B. TILLY
ASSISTANT ATTORNEY GENERAL
CHIEF, MULTICOUNTY GRAND JURY UNIT

AGREEMENT OF DEFERRED PROSECUTION

The State of Oklahoma, by and through its duly elected and acting Attorney General E. Scott Pruitt, by and through Assistant Attorney General Megan Tilly, in and for Pittsburg County, State of Oklahoma, pursuant to 22 O.S. § 305.1 *et seq.* and after considering the factors listed below, enters into the following *Deferred Prosecution Agreement* with **WILLIAM HARBERT LAYDEN, JR.**

FACTORS CONSIDERED

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;
2. The nature of the offense with priority given to first offenders and non-violent crimes;
3. Any special characteristics of William Harbert Layden, Jr.;
4. Whether William Harbert Layden, Jr will cooperate and benefit from a deferred prosecution program;
5. Whether available programs are appropriate to William Harbert Layden, Jr.'s needs;
6. Whether the services for William Harbert Layden, Jr. are more readily available from the community or from the corrections system;
7. Whether William Harbert Layden, Jr. constitutes a substantial danger to others;
8. The recommendations of the law enforcement agency involved in the case;
9. The opinions of the victim; and
10. Any mitigating or aggravating circumstances.

VIOLATION

The Attorney General states he has sufficient evidence to charge William Harbert Layden, Jr.; with *Conspiracy to Defraud the State*, in violation of Title 21 O.S. § 424, related to or arising from certain actions taken by William Harbert Layden, Jr. during the course of the

Oklahoma State Bureau of Investigation (OSBIO and the Oklahoma State Auditor and Inspector's (OSAI) criminal investigative and special audit of the District 18 Drug Court Program, as described in detail in the *Indictment* in the above -styled and -numbered matter. William Harbert Layden, Jr. denies wrongdoing, but enters into this agreement as a compromise of disputed claims.

William Harbert Layden, Jr. fully cooperated in the investigation of this matter. This agreement is made in the best interest of William Harbert Layden, Jr., and is not contrary to the public interest of the State of Oklahoma.

The State of Oklahoma, by and through the Attorney General of Oklahoma, hereby agrees not to prosecute the above offenses against William Harbert Layden, Jr., provided he complies with the terms and conditions of this *Deferred Prosecution Agreement* as provided by law.

TERMS AND CONDITIONS

William Harbert Layden, Jr. agrees to comply with the following terms and conditions of this *Deferred Prosecution Agreement* for a period of one (1) year from the date of this agreement:

(1) William Harbert Layden, Jr. does hereby acknowledge the right to a speedy and public trial by jury; the right to confront and cross-examine all witnesses called to testify against him; the right to remain silent; the right to subpoena witnesses and present evidence in his own defense; the right to testify if he so chooses, however, anything that William Harbert Layden, Jr. says can be used against him in a court of law; the right to be presumed innocent of the crime; and the right to require the State of Oklahoma to prove his guilt beyond a reasonable doubt. William Harbert Layden, Jr. has the right to counsel, and to have him present prior to and during

the signing of this *Deferred Prosecution Agreement*, and if he can not afford to hire an attorney, one would be appointed to represent him. **William Harbert Layden, Jr. has read and understands each of the above rights and specifically waives the right to a speedy accusation, a speedy trial, and any statute of limitations or other defenses to refilling of said charges in exchange for the State of Oklahoma agreeing to this *Deferred Prosecution Agreement*.**

(2) A *Preliminary Hearing* was held in the above –styled and –numbered cause on December 19, 20th and 21st of 2011. William Harbert Layden, Jr. specifically waives the right a new Preliminary Hearing for the crime charged in the above –styled and –numbered cause should this *Deferred Prosecution Agreement* be terminated and charges be refilled.

(3) William Harbert Layden, Jr. does hereby agree to the following conditions during the time period of this *Deferred Prosecution Agreement*;

(a) William Harbert Layden, Jr. shall not violate any laws of the City, State or Federal governments, and shall be law-abiding citizen, provided that offenses such as minor traffic and parking violations shall not be considered a violation of this agreement.

(b) William Harbert Layden, Jr. understands that it will be a violation of this agreement to not tell the truth to any branch of government or a representative thereof;

(c) William Harbert Layden, Jr. will pay \$4717.14 in restitution to the Oklahoma Office of the State Auditor and Inspector (OSAI), constituting one-third of the cost of the OSAI audit of the District 18 Drug Court Program, to be paid pursuant to the attached Restitution Schedule.

(d) William Harbert Layden, Jr. will not hold public office or employment, including but not limited to judicial office, in the State of Oklahoma

(e) William Harbert Layden, Jr. hereby states that he has carefully read the above rules and conditions and fully understands its obligations under the terms of this agreement.

(3) The State of Oklahoma hereby agrees not file charges against William Harbert Layden, Jr. for the crimes stated above if William Harbert Layden, Jr. satisfactorily completes the conditions of this agreement.

(4) As provided for by law, any deferred prosecution agreement shall be a record open to the public. 22 O.S. § 305.2(H).

TERMINATION OF THE AGREEMENT

Both the State of Oklahoma and William Harbert Layden, Jr. may mutually terminate the deferred prosecution at any time, and the case shall proceed as if there had been no agreement. If the State of Oklahoma makes the termination decision unilaterally, it shall only do so in light of all the relevant circumstances of the case. Arrest of William Harbert Layden, Jr. for an offense shall not automatically terminate the agreement. If the State of Oklahoma should decide to terminate the agreement, it shall:

1. Send a written notice of termination to William Harbert Layden, Jr. and his attorney, if any, explaining the reasons for the termination;
2. Disclose to William Harbert Layden, Jr., or the attorney for William Harbert Layden, Jr., the evidence supporting the decision to terminate; and
3. Afford William Harbert Layden, Jr. the opportunity to be heard and present evidence, and cross-examine witnesses before a judge of the district court. He shall have ten (10) days from the date of mailing of the notice to file a written request with the court clerk for the county in which a charge is pending for the

hearing, after which the right to a hearing shall be waived. The burden shall be upon the State of Oklahoma to prove that William Harbert Layden, Jr. did not fulfill the conditions of the agreement, and that an information should be filed.

If the agreement is terminated by the State of Oklahoma, and William Harbert Layden, Jr. is brought to trial before a jury, William Harbert Layden, Jr. agrees that the court shall instruct the jury not to consider any delay in filing charges while William Harbert Layden, Jr. was participating in the deferred prosecution program.

The State of Oklahoma and William Harbert Layden, Jr. both understand and agree with the terms and conditions of this agreement.

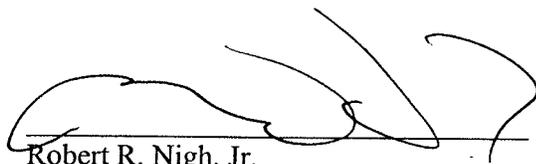
DATED this 22 day of January, 2013.

E. SCOTT PRUITT
ATTORNEY GENERAL

William Harbert Layden Jr.
William Harbert Layden, Jr.

By:

Megan Tilly
Megan B. Tilly (OBA # 22655)
Assistant Attorney General
Chief, Multicounty Grand Jury Unit



Robert R. Nigh, Jr.
Brewster & De Angelis, P.L.L.C.
2617 E 21st St
Tulsa, OK 74114
Attorney for William Harbert Layden, Jr.

WAIVER OF RIGHT TO SPEEDY TRIAL

The undersigned Defendant, in consideration for a deferred prosecution of one (1) year, hereby waives his right to speedy trial under the Constitution and laws of the United States of America and under the Constitution and laws of the State of Oklahoma, and agrees that the above matter may be refiled and prosecuted if the undersigned Defendant violate any city, state or federal law within the term of the deferred prosecution.

My constitutional right to speedy trial has been explained to me and I understand and hereby waive and relinquish the same. This waiver is voluntary and in consideration of the deferred prosecution only.

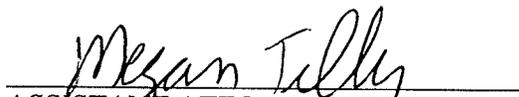
DATED this 22nd day of January, 2013.



ATTORNEY FOR ACCUSED



ACCUSED



ASSISTANT ATTORNEY GENERAL

WITNESS

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

AFFIDAVIT OF WILLIAM HARBERT LAYDEN, JR.

From January 2006 until October of 2011 I was the Special Judge assigned to the District 18 Drug Court. From February 2006 until June 2010 Angie Marcum was the District 18 Drug Court Coordinator. During her tenure as Drug Court Coordinator I gave Ms. Marcum extensive autonomy in accepting and accounting for drug court participant fees and payments.

In May of 2010, I learned there was a Multi-County Grand Jury Investigation of the District 18 Drug Court, and there would also be an audit in order to determine if there had been a misappropriation of funds by Ms. Marcum. I was unduly trusting of Ms. Marcum and at the time believed she was being unjustly accused. I then took actions which in retrospect I should not have taken, and which could have had the effect of hampering the OSBI and Multi-County Grand Jury. Specifically, I asked Assistant District Attorney Mike Miller to interview drug court participants based upon statements made by Angie Marcum alleging certain drug court participants might be responsible for missing funds and an alleged missing receipt book.

At the time I was unaware that drug court participants were not being provided sequentially numbered state issued receipts for payments they were making and on many occasions were being provided receipts on "sticky notes" that were never properly documented. If I had been aware of these facts I would never have asked Mike Miller to make any inquiry of drug court participants whatsoever.

I now believe I should have taken no action in connection with the investigation but should have allowed it to be handled by completely independent agencies. The evidence I have now seen makes me believe the State can prove Ms. Marcum did embezzle funds from the

