No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CAMERON HEATH RAY,
Petitioner,

-v-

THE STATE OF OKLAHOMA,
Respondent.

On petition for writ of certiorari to the
Court of Criminal Appeals of the State of Oklahoma

UNOPPOSED MOTION FOR EXTENSION OF DEADLINE TO FILE CERT PETITION

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ATTORNEY FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

CAMERON HEATH RAY,
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To the Supreme Court of the United States:

Cameron Heath Ray, an Oklahoma inmate, respectfully files this motion to extend the deadline for his cert petition to October 15, 2018. As cause, Ray would show the Court as follows:

1) The case arises from a prosecution for Assault and Battery With A Deadly Weapon.

2) The Oklahoma Court of Criminal Appeals ruled on June 14, 2018. The cert deadline is September 12, 2018.

3) The undersigned counsel was contacted just yesterday by representatives of Mr. Ray about a cert petition.

4) The problem is that state direct appellate counsel filed a deficient motion to withdraw on July 2, 2018. This motion was denied on July 11, 2018. But nowhere in the motion to withdraw did state direct appeals counsel state the deadline to file for cert.

Respectfully submitted this 12th day of September 2018,

By: _____

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ATTORNEY FOR PETITIONER

CERTIFICATE OF CONFERENCE

I hereby certify that on September 12, 2018, I conferred with Jennifer Dickson in the Oklahoma Attorney General's office; she is UNOPPOSED.

_____
Seth Kretzer

CERTIFICATE OF MAILING

I hereby certify that, on the 12th day of September 2018, this pleading was deposited with the U.S. Postal Service, in an envelope or package correctly

addressed, with sufficient postage to assure delivery by certified first-class mail, R.R.R.

Seth Kretzer

Seth Kretzer

Tab 1

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CAMERON HEATH RAY,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. F-2017-35**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

ROWLAND, JUDGE:

Appellant Cameron Heath Ray appeals his Judgment and Sentence from the District Court of Pontotoc County, Case No. CF-2015-202, for two counts of Assault and Battery with a Deadly Weapon in violation of 21 O.S.2011, § 652(C). The Honorable C. Steven Kessinger presided over Ray's jury trial and sentenced him to fifteen years imprisonment on each count in accordance with the jury's verdicts.[1] Judge Kessinger ordered the sentences to be served consecutively. Ray raises the following issues:

(1) whether the trial judge erred in failing to recuse;

(2) whether the jury panel was tainted;

(3) whether the evidence was legally sufficient to convict him of two counts of Assault and Battery with a Deadly Weapon;

(4) whether the trial court erred in allowing the admission of evidence that was more prejudicial than probative;

(5) whether the trial court erred in denying the motion to suppress evidence;

[1] Under 21 O.S.Supp.2014, § 13.1, Ray must serve 85% of the sentence imposed before he is eligible for parole.

(6) whether his convictions for two counts of Assault and Battery with a Deadly Weapon are contrary to the statutory and constitutional protections against double punishment and double jeopardy;

(7) whether the trial court erred by failing to give the requested instructions on lesser-included offenses;

(8) whether prosecutorial misconduct deprived him of his right to a fair trial;

(9) whether the trial court erred by failing to run the sentences concurrently; and

(10) whether an accumulation of error deprived him of a fair trial.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

1.

Ray challenges the trial judge's failure to recuse himself. The proper procedure to seek recusal of a judge is to first make an in camera request; then file a motion; then re-present the motion to the Chief Judge of the county; then seek a writ of mandamus from this Court to have the assigned judge disqualified. Rule 15, *Rules for District Courts of Oklahoma*, Title 22, Ch. 18, App. (2018); Rule 10.6(B), *Rules for the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018); 20 O.S.2011, § 1403. Because Ray failed to follow proper procedure for disqualification of the judge, the issue of recusal has been waived for review on appeal. *See Welch v. State*, 2000 OK CR 8, ¶ 37, 2 P.3d 356, 322.

While the recusal claim is waived, Ray's claim of judicial bias is not. A defendant can waive his right to preclude a disqualified judge from hearing his case but he does not thereby waive the right to have his trial conducted in a fair and impartial manner; a defendant is always entitled to a fair and impartial trial, not tainted by the personal bias or prejudice of a trial court. *Mitchell v. State*, 2006 OK CR 20, ¶ 87, 136 P.3d 671, 706; Okla. Const. Article II, Section 6. We presume trial judges are impartial. *Frederick v. State*, 2001 OK CR 34, ¶ 176, 37 P.3d 908, 951-52. A defendant asserting a claim that the trial judge was biased must show the trial court harbored prejudice against him which materially affected his rights at trial and that he was prejudiced by the trial court's actions. *See Mehdipour v. State*, 1998 OK CR 23, ¶ 9, 956 P.2d 911, 915. Ray has failed to show that the judge was biased, not impartial, harbored prejudice against him, or that he was in any way prejudiced by the trial court's actions. This proposition is denied.

2.

After the close of the jury trial but before sentencing, Ray filed a motion for a new trial in which he set forth several arguments supporting his request. One of the grounds upon which his motion was based was an allegation of potential juror misconduct. When, as here, a new trial is requested based on juror misconduct alleged to have occurred prior to submission of the case, the appellant bears the burden of showing both juror prejudice and harm as a result of the juror's service. *See Edwards v. State*, 1991 OK CR 71, ¶ 12, 815

P.2d 670, 673. Where alleged juror misconduct was litigated below and involves the factual issues of whether there were improper communications that resulted in the jury considering extraneous information in rendering its verdict, we defer to the trial court's ruling unless it is clearly erroneous. *See Matthews v. State*, 2002 OK CR 16, ¶ 3, 45 P.3d 907, 912.

In the present case, the issue of juror misconduct was litigated at the sentencing hearing. The court ruled that the defense had not met its burden and the motion for new trial was denied. The record before this Court supports the finding that the trial court's ruling was not clearly erroneous; Ray has shown neither juror prejudice nor harm. Relief is not required.

3.

The jury was instructed on the defense of self-defense against the charge that Ray committed the crime of assault and battery with a deadly weapon upon Price. Ray claims that the evidence was insufficient to support his conviction on this count because the State failed to show that he was not acting in self-defense when he shot Price. Once the defense of self-defense is raised, the State bears the burden to disprove it beyond a reasonable doubt. *See* OUJI-CR(2d) 8-49; *McHam v. State*, 2005 OK CR 28, ¶ 10, 126 P.3d 662, 667. "A person is justified in using deadly force in self-defense if that person reasonably believed that use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm." *Bechtel v. State*, 1992 OK CR 55, ¶ 33, 840 P.2d 1, 11; OUJI-CR(2d) 8-46. This standard is a hybrid

standard that combines both objective and subjective elements. *Id.* As such, jurors "must first determine whether the defendant believed that he was faced with imminent danger of death or great bodily harm before he used physical force and then determine whether the defendant's belief was reasonable." *Perryman v. State*, 1999 OK CR 39, ¶ 9, 990 P.2d 900, 904. The State's evidence was sufficient to disprove the claim that Ray shot Price in self-defense.

Ray also claims that the evidence presented at trial was insufficient to support his convictions for assault and battery with a deadly weapon against both Jennifer Ray and Price. To sustain a conviction for assault and battery with a deadly weapon the State is required to prove an assault and battery upon another person with a deadly weapon. *See* 21 O.S.2011, § 652(C). This Court reviews challenges to the sufficiency of the evidence in the light most favorable to the State and will not disturb the verdict if any rational trier of fact could have found the essential elements of the crime charged to exist beyond a reasonable doubt. *Head v. State*, 2006 OK CR 44, ¶ 6, 146 P.3d 1141, 1144. *See also Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. In evaluating the evidence presented at trial, we accept the fact-finder's resolution of conflicting evidence as long as it is within the bounds of reason. *See Gilson v. State*, 2000 OK CR 14, ¶ 77, 8 P.3d 883, 910; *Day v. State*, 2013 OK CR 8, ¶ 12, 303 P.3d 291, 298. This Court also accepts all reasonable inferences and credibility choices that tend to support the verdict. *Coddington v. State*, 2006

OK CR 34, ¶ 70, 142 P.3d 437, 456. The evidence noted above, when viewed in a light most favorable to the State, supported the jury's finding, beyond a reasonable doubt, that Ray was guilty of assault and battery with a deadly weapon against both Jennifer Ray and Price. This proposition is without merit and relief is not required.

4.

Ray complains that error occurred when the State was allowed to ask him questions on cross-examination which elicited testimony outside the scope of direct examination. He also complains about evidence introduced by the State for impeachment purposes. The admission of evidence lies within the sound discretion of the trial court and, when the issue is properly preserved for appellate review, we will not disturb the trial court's decision absent a clear abuse of discretion resulting in prejudice. *See Baird v. State,* 2017 OK CR 16, ¶ 37, 400 P.3d 875, 885; *Jones v. State,* 2006 OK CR 5, ¶ 48, 128 P.3d 521, 540). An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State,* 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. Alleged error to which Ray did not object at trial is waived for review of all but plain error. To be entitled to relief under the plain error doctrine, Ray must prove the existence of an actual error that is plain or obvious, and that the error affected his substantial rights, meaning the error affected the outcome of the

proceeding. *Levering v. State*, 2013 OK CR 19, ¶ 6, 315 P.3d 392, 395. This court will correct plain error only if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

Ray first complains that the prosecutor elicited testimony from him during cross examination about his feelings for Jennifer Ray at the time of the trial. The record belies Ray's claim. During cross examination the prosecutor asked Ray if he loved Jennifer Ray on April 5, 2015. Ray responded in the affirmative and added, "And I still do." The prosecutor's question did not elicit Ray's response; it only asked about his feelings for Jennifer Ray at the time she was shot. Ray's answer was not responsive to the question asked and he cannot complain on appeal about any prejudice he may have incurred from his volunteered testimony. There was no error here, plain or otherwise.

After Ray testified that he still loved Jenifer Ray at the time of trial, the prosecution impeached his testimony with a portion of a phone conversation between Ray and his mother recorded while he was in jail. Prior to the admission of this evidence, defense counsel objected arguing that the conversation was not relevant. The objection was overruled but the trial court instructed the jury that the conversation was to be considered for the limited purpose of impeachment to assist the jury in considering the weight and credibility of Ray's testimony; it was not to be considered as proof of guilt or

innocence. The recorded conversation was relevant for this limited purpose and the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. 12 O.S.2011, § 2403. The trial court did not abuse its discretion by allowing the recorded conversation to be admitted into evidence for this limited purpose. Ray's claim is denied.

5.

The vehicle Ray drove on the night of the shooting was seized without a warrant but it was searched only after a warrant had been secured. Ray filed a motion to suppress the evidence found during the search. The motion was argued at a pretrial hearing and subsequently overruled. He argues on appeal that this ruling was error. This Court reviews a trial court's ruling on a motion to suppress evidence based on a complaint of an illegal search and seizure for an abuse of discretion; we defer to the trial court's findings of fact unless they are clearly erroneous, and review legal conclusions *de novo*. *See Cripps v. State*, 2016 OK CR 14, ¶ 6, 387 P.3d 906, 909; *State v. Alba*, 2015 OK CR 2, ¶ 4, 341 P.3d 91, 92.

Ray argues that the warrantless seizure of his pickup was illegal and the live rounds of ammunition found during the subsequent search of the vehicle were inadmissible at trial as fruit of the poisonous tree. The vehicle here unquestionably constituted evidence of the very crime being investigated; Ray had been identified as the assailant and his pickup had been seen leaving the scene of the crime. Because the pickup itself was evidence of the crimes being

investigated, police needed no other authority to seize it. See *Tomlin v. State*, 1994 OK CR 14, ¶ 39, 869 P.2d 334, 342; *Lee v. State*, 1981 OK CR 59, ¶ 3, 628 P.2d 1172, 1173; *Florida v. White*, 526 U.S. 559, 119 S.Ct. 1555, 143 L.Ed.2d 748 (1999). There was no violation of Ray's rights under the Fourth Amendment; the trial court did not abuse its discretion in denying his motion to suppress.

6.

Ray contends that his two convictions for assault and battery with a deadly weapon, for shooting two victims, violated the statutory prohibition against double punishment and constitutional prohibitions against double jeopardy. Ray did not raise this issue before the trial court. Therefore, he has waived appellate review of the claim for all but plain error. *Head*, 2006 OK CR 44, ¶ 9, 146 P.3d at 1144. We review Ray's claim under the analysis set forth in *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923.

We find that Ray's two convictions for assault and battery with a deadly weapon do not violate Oklahoma's statutory prohibition against double punishment. 21 O.S.2011, § 11(A). The two crimes did not arise out of one act. *See Logsdon v. State*, 2010 OK CR 7, ¶ 17, 231 P.3d 1156, 1164-65 (where there is a series of separate and distinct crimes Section 11 is not violated). *See also Watts v. State*, 2008 OK CR 27, ¶ 16, 194 P.3d 133, 139. Although Ray asserts that the shooting occurred as part of a single act during the struggle over the gun, the State's evidence showed that he deliberately shot Price and

then he deliberately shot Jennifer; there were two separate victims as a result of two separate crimes.

This Court applies the test set out in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306, 309 (1932), to evaluate constitutional claims of double jeopardy. *Logsdon*, 2010 OK CR 7, ¶ 19, 231 P.3d at 1165. Under the *Blockburger* test, this Court asks whether each offense requires proof of an additional fact that the other does not. *Id.* Here, the two offenses of assault and battery with a deadly weapon were separate and distinct offenses each requiring proof of an additional fact since he was charged with shooting two different victims. *See Wimberly v. State*, 1985 OK CR 37, ¶ 10, 698 P.2d 27, 31 ("Offenses committed against different individual victims are not the same for double jeopardy purposes though they arise from the same episode."). *See also Whittmore v. State*, 1987 OK CR 192, ¶ 10, 742 P.2d 1154, 1157-58 (there is no double jeopardy or double-punishment violation when separate counts of that crime are charged based on the number of victims involved). There was no error, plain or otherwise. Relief is not required.

7.

Ray argues that the trial court erred in failing to instruct the jury on the lesser offenses of assault and battery with a dangerous weapon and reckless conduct with a firearm as requested. "It is settled law that trial courts have a duty to instruct the jury on the salient features of the law raised by the evidence with or without a request." *Hogan*, 2006 OK CR 19, ¶ 39, 139 P.3d at

923 (*citing Atterberry v. State*, 1986 OK CR 186, ¶ 8, 731 P.2d 420, 422). *See also Soriano v. State*, 2011 OK CR 9, ¶ 36, 248 P.3d 381, 396. This Court reviews a trial court's choice of jury instructions for an abuse of discretion. *See Cuesta-Rodriguez v. State*, 2010 OK CR 23, ¶ 59, 241 P.3d 214, 234 (*citing Eizember v. State*, 2007 OK CR 29, ¶ 111, 164 P.3d 208, 236).

Under the lesser included offense doctrine, "[t]he jury may find the defendant guilty of any offense, the commission of which is necessarily included in that which he is charged." 22 O.S.2011, § 916. A defendant is entitled to a lesser-included offense instruction, however, only when the instruction is warranted by the evidence. *See Ball v. State*, 2007 OK CR 42, ¶ 32, 173 P.3d 81, 90 (*citing Glossip v. State*, 2001 OK CR 21, ¶¶ 28-29, 29 P.3d 597, 603-04). The test for determining whether a lesser-included offense instruction is warranted "is an objective one - we do not ask a jury to consider a lesser offense if no jury could rationally find both that the lesser offense was committed and that the greater offense was not." *Frederick v. State*, 2001 OK CR 34, ¶ 137, 37 P.3d 908, 943-944.

In this case, the jury could not reasonably have found the lesser offense was committed and the greater was not. The evidence showed that Ray used a gun to shoot Jennifer Ray and Price. A gun is a deadly weapon per se, not merely a dangerous one. *See Murphy v. State*, 1944 OK CR 54, 151 P.2d 69, 73 (defendant was not entitled to instruction on assault and battery because the gun used by defendant was "a deadly weapon per se"). Because the gun was a

deadly weapon, no reasonable jury could rationally find Ray guilty of the lesser offense of assault and battery with a dangerous weapon and acquit him of the greater offense of assault and battery with a deadly weapon. The trial judge's decision not to instruct on the lesser offense of assault and battery with a dangerous weapon was justified under the facts and law. The trial judge did not abuse his discretion.

Ray also complains that the trial court erred in refusing to instruct the jury on the lesser related offense of reckless conduct with a firearm. Title 21 O.S.2011, § 1289.11 provides that:

> It shall be unlawful for any person to engage in reckless conduct while having in his or her possession any shotgun, rifle or pistol, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person.

Again, the trial court must instruct on any lesser included offense warranted by the evidence. *Jones v. State*, 2006 OK CR 17, ¶ 6, 134 P.3d 150, 154, (*citing Shrum v. State*, 1999 OK CR 41, 991 P.2d 1032). To determine whether lesser-included offense instructions are warranted, this Court looks at whether the evidence might allow a jury to acquit the defendant of the greater offense and convict him of the lesser. *See Harris v. State*, 2004 OK CR 1, ¶ 50, 84 P.3d 731, 750. In this instance, the evidence does not allow such result.

The testimony of the State's witnesses was that Ray shot at them deliberately while he was in full control of the firearm. Ray contends, however, that he pulled the gun and shot Price in self-defense and that the weapon

discharged hitting Jennifer Ray accidentally, as he wrestled with Price. Ray's own testimony that he pulled the gun in self-defense belies any inference that he discharged the firearm as a result of carelessness or rashness in handling it. A jury instruction on the offense was not warranted and the trial court judge did not abuse his discretion by refusing Ray's request.

8.

Ray complains prosecutorial misconduct deprived him of his right to a fair trial. Although defense counsel objected to one of the comments at issue, the others were not met with contemporaneous objection. The alleged misconduct not objected to at trial is reviewed for plain error only. *Harney v. State*, 2011 OK CR 10, ¶ 23, 256 P.3d 1002, 1007. We review Ray's claim under the analysis set forth in *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923. Again, this Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice. *Id.* "[W]e evaluate the alleged misconduct within the context of the entire trial, considering not only the propriety of the prosecutor's actions, but also the strength of the evidence against the defendant and the corresponding arguments of defense counsel." *Hanson v. State*, 2009 OK CR 13, ¶ 18, 206 P.3d 1020, 1028. Both sides have wide latitude to discuss the evidence and reasonable inferences therefrom. *See Harmon*, 2011 OK CR 6, ¶ 81, 248 P.3d at 943. Relief is only granted where the prosecutor's flagrant misconduct so infected the defendant's trial that it was

rendered fundamentally unfair. *Jones v. State*, 2011 OK CR 13, ¶ 3, 253 P.3d 997, 998. It is the rare instance when a prosecutor's misconduct during closing argument will be found so egregiously detrimental to a defendant's right to a fair trial that reversal is required. *See Pryor v. State*, 2011 OK CR 18, ¶ 4, 254 P.3d 721, 722.

A review of the record in the present case reveals that all but one of the comments at issue were not met with objection at trial. These comments did not affect the trial and cannot be found to have been plain error. The comment to which defense counsel did object was not improper. Considering the alleged misconduct within the context of the entire trial, we find that none of the alleged improper comments, either considered individually or cumulatively, rendered Ray's trial fundamentally unfair. Relief is not warranted.

9.

Ray claims the trial judge abused his discretion by refusing to run his sentences concurrently. The decision to run a defendant's sentences concurrently or consecutively rests within the sound discretion of the trial court. *Neloms*, 2012 OK CR 7, ¶ 35, 274 P.3d at 170. In fact, sentences are to run consecutively unless the trial judge, in his or her discretion, rules otherwise. 21 O.S.2011, § 61.1. As with other decisions left to the trial court's discretion, we will not interfere with that decision unless an abuse of discretion can be shown. *Neloms*, 2012 OK CR 7, ¶ 35, 274 P.3d at 170. The judge exercised his discretion and his exercise of this discretion was not an abuse of

discretion. This Court will not disturb a sentence within statutory limits unless, under the facts and circumstances of the case, it is so excessive as to shock the conscience of the Court. *Pullen v. State*, 2016 OK CR 18, ¶ 16, 387 P.3d 922, 928. Ray's sentence does not meet that test, and no relief is warranted.

10.

Ray claims that even if no individual error in his case merits reversal, the cumulative effect of the errors committed requires a new trial or sentence modification. The cumulative error doctrine applies when several errors occurred at the trial court level, but none alone warrants reversal. Although each error standing alone may be of insufficient gravity to warrant reversal, the combined effect of an accumulation of errors may require a new trial. *Martinez v. State,* 2016 OK CR 3, ¶ 85, 371 P.3d 1100, 1119. Cumulative error does not deprive the defendant of a fair trial when the errors considered together do not affect the outcome of the proceeding. *Baird,* 2017 OK CR 16, ¶ 42, 400 P.3d at 886. And clearly, a cumulative error claim is baseless when this Court fails to sustain any of the alleged errors raised on appeal. *Id.* There were no errors, either individually or when considered together, that deprived Ray of a fair trial. This claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title

22, Ch. 18, App. (2018), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY
THE HONORABLE C. STEVEN KESSINGER, DISTRICT JUDGE

APPEARANCES AT TRIAL

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OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE

OPINION BY: ROWLAND, J.
LUMPKIN, P.J.: Concur in Results
LEWIS, V.P.J.: Concur
HUDSON, J.: Concur
KUEHN, J.: Concur

Tab 2

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

CAMERON HEATH RAY,	)	
	)	
Appellant,	)	F-2017-35
	)	
v.	)	Appeal from the District
	)	Court of Pontotoc County
	)	Case No. CF-2015-202
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

MOTION TO WITHDRAW FROM REPRESENTATION AND REQUEST FOR MORE TIME ON MR. RAY'S BEHALF

Undersigned counsel represented Mr. Ray in the above-numbered case on appeal. The convictions were affirmed on June 14, 2018 and the mandate was issued that same day, and appellate counsel is neither filing a Petition for Rehearing nor sponsoring a Petition for Rehearing. *See* Rule 3.14(A), Rules of the Court of Criminal Appeals, 22 O.S.2011, Ch. 18, App., which states, "A petition for rehearing, unless otherwise ordered by this Court, shall be made by the attorney of record, and filed with the Clerk within twenty (20) days from the date on which the opinion in the cause was filed."

Mr. Ray has indicated that he would like to file a *pro se* Petition for Rehearing, which currently is due on July 4, 2018. Mr. Ray has also requested that counsel request a continuance of time for filing the *pro se* Petition for Rehearing. Counsel only became aware of Mr. Ray's request on July 2 2018.

Although this Court's Rule 3.14(D) is clear that the Petition for Rehearing must be filed within twenty days, the unusual circumstances in this case support a plea for an extension of time on Mr. Ray's behalf on the basis of equal justice under the law.

WHEREFORE, undersigned counsel asks to withdraw from this case so that Mr. Ray may file a *pro se* Petition for Rehearing, and more time is requested for Mr. Ray to do so.

RESPECTFULLY SUBMITTED,

Lisbeth L. McCarty
Appellate Defense Counsel
Oklahoma Bar No. 10896
P.O. Box 926
Norman, OK 73070
(405) 801-2727

CERTIFICATE OF SERVICE

This is to certify that on July 2, 2018, a true and correct copy of the foregoing Motion was served upon the Attorney General by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General, and was caused to be mailed, via United States Postal Service, postage pre-paid, to Appellant at the address set out below, on the date of filing or the following business day.

Cameron Heath Ray #769591
North Fork Correctional Center
1605 East Main
Sayre, Oklahoma 73662

Lisbeth L. McCarty

Tab 3

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CAMRON HEATH RAY,	)	
	)	
Petitioner,	)	NOT FOR PUBLICATION
	)	
vs.	)	Case No. F-2017-35
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent,	)	

ORDER DENYING COUNSEL'S MOTION TO WITHDRAW FROM REPRESENTATION AND REQUEST FOR EXTENSION OF TIME FOR PETITIONER TO FILE *PRO SE* PETITION FOR REHEARING

Petitioner Cameron Heath Ray's Judgment and Sentence in the above styled appeal was affirmed by this Court on June 14, 2018. *Ray v. State*, Case No. F-2017-35 (unpublished opinion). His petition for rehearing was due on July 4, 2018, and was required to be filed by Ray's attorney of record. *See* Rule 3.14(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018). On July 2, 2018, Ray's attorney of record filed with this Court a motion in which she advised the Court that on this same date Ray communicated to her his intent to file a *pro se* petition for rehearing. Appellate counsel stated in the motion that she was

neither filing a petition for rehearing on Ray's behalf nor sponsoring a petition for rehearing. Rather, appellate counsel requested that this Court allow her to withdraw from the case and grant an extension of time within which Ray can file a *pro se* petition for rehearing. Counsel has cited no authority authorizing the requested withdrawal from representation nor has counsel stated good cause for the extension of time.

THEREFORE IT IS THE ORDER OF THIS COURT that the Motion to Withdraw from Representation and Request for Extension of Time to File Petition for Rehearing is **DENIED.**

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 11th day of July, 2018.

GARY L. LUMPKIN, Presiding Judge

DAVID B. LEWIS, Vice Presiding Judge

ROBERT L. HUDSON, Judge

DANA KUEHN, Judge

SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden

Clerk