

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE LEROY DEAN DENNIS, *pro-se* – PETITIONER

vs.

STATE OF OKLAHOMA – RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C.A. § 2241 – BY A PRISONER IN STATE CUSTODY
AND SUPREME COURT RULE 22 TO
ASSOCIATE JUSTICE STEPHEN BREYER

ON APPEAL FROM OKLAHOMA COURT OF CRIMINAL APPEALS,

STATE OF OKLAHOMA

APPLICATION TO ASSOCIATE JUSTICE STEPHEN BREYER

APPENDICES

Leroy Dean Dennis – *pro-se* 204490
Box 548 - J-D-154
Lexington, OK 73051

APPENDICES

APPENDIX A

**ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF AND
BARRING PETITIONER FROM FILING ANY FURTHER REQUESTS
FOR RELIEF IN OKLAHOMA COUNTY CANE NO. CF 191-994**

APPENDIX B

**ORDER DENYING PETITIONER'S SUBSEQUENT (FOURTH)
APPLICATION FOR POST-CONVICTION RELIEF, MOTION FOR
EVIDENTIARY HEARING AND MOTION TO VACATE JUDGMENT
AND SENTENCE**

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY - 7 2018

LEROY DEAN DENNIS,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

No. PC-2017-816

**ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF AND BARRING
PETITIONER FROM FILING ANY FURTHER REQUESTS FOR RELIEF IN
OKLAHOMA COUNTY CASE NO. CF-1991-994**

On August 9, 2017, Petitioner Dennis, *pro se*, appealed to this Court from an order of the District Court of Oklahoma County denying his application for Post-Conviction relief in Oklahoma County Case No. CF-1991-994.

In March 1992, Dennis, represented by counsel, was convicted by a jury of First Degree Murder in Oklahoma County Case No. CF-1991-994, and was sentenced to life without the possibility of parole. In 1994, this Court affirmed Dennis's conviction in a published opinion issued May 23, 1994. *See, Dennis v. State*, 1994 OK CR 34, 879 P.2d 1227. A review of this Court's docket indicates this is Dennis's third application for post-conviction relief filed with this Court in this matter over the past 24 years. All issues previously ruled upon by this Court are *res judicata*, and all issues not raised in Dennis's previous post-conviction appeals, which could have been raised, are waived.

Dennis's most recent application for post-conviction relief filed with the District Court alleges the following:

1. That he was denied due process when prosecution witnesses testified falsely;
2. Upon removing the false testimony from the jury's consideration the State presented insufficient evidence to convict him of the charged offense;
3. There is a material issue of fact with the discovery of this alleged new evidence that shows three (3) prosecution witnesses testified falsely;
4. Failure of the State to establish venue that the alleged crime was committed in Oklahoma County;
5. Insufficiency of the evidence;
6. Failure of the State to prove Dennis guilty of the charged offense beyond a reasonable doubt;
7. Ineffective assistance of both trial and appellate counsel.

Dennis's application for relief filed with this Court alleges that the trial court failed to follow the dictates of this Court's decision in *Logan v. State*, 2013 OK CR 2, 293 P.3d 969 in resolving his claim of ineffective assistance of counsel; the court erred in denying Dennis's claim of improper venue; that the court erred by not vacating Dennis's judgment and sentence based upon the claims presented in his most recent application for relief; and that Dennis has been denied due process and access to the courts in his attempts to appeal his conviction.

In a most thorough and complete order entered and filed July 11, 2017, the District Court of Oklahoma County, the Honorable Glenn M. Jones, District Judge, denied Dennis's request for relief. Judge Jones determined that this

was Dennis's fourth application for post-conviction relief submitted to the district court for resolution.¹ Dennis next filed a Petition for Writ of Habeas Corpus in the Western District of Oklahoma alleging ineffective assistance of trial counsel and claiming he had new evidence relating to his innocence.² That petition was denied and Dennis appealed that denial to the 10th Circuit Court of Appeals.³ That denial was affirmed and Dennis filed a Petition for Writ

¹ In his first application for post-conviction relief filed in the District Court, Dennis alleged the following:

1. The district court erred by not dismissing the charging information as venue was not properly vested in Oklahoma County;
2. Insufficiency of the evidence;
3. That Dennis was convicted on non-existent and inconsistent circumstantial evidence;
4. The district court erred by refusing Dennis's requested instruction on proof of venue;
5. The district court erred in allowing prosecution to present expert testimony of a witness without a proper foundation and where testimony was not supported by the facts and evidence;
6. The district court erred in allowing improper, prejudicial and inflammatory comments by the District Attorney;
7. The district court committed reversible error by not sustaining Dennis's demurrer to the evidence based on insufficiency and denying the request for a directed verdict;
8. Dennis was improperly and illegally tried for murder when the State did not meet its burden at preliminary hearing;
9. The district court erred by allowing hearsay testimony;
10. The district court committed error by allowing the State to introduce immaterial, irrelevant and incompetent evidence which prejudiced Dennis;
11. Cumulative error;
12. Sentence of life without parole is cruel and unusual;
13. Dennis was denied due process and a fair trial when the State was allowed to proceed with trial without providing Dennis with an accurate witness list;
14. Dennis received ineffective assistance of trial counsel when counsel failed to properly investigate Dennis's alleged crime, to perform tests for rebuttal testimony and to file motions to protect Dennis's constitutional rights; and
15. Dennis received ineffective assistance of appellate counsel because counsel failed to prepare proper briefs citing argument and authority alleging all trial errors.

The District Court denied this request for relief on November 29, 1995 and that denial was affirmed by this Court in an unpublished order issued June 18, 1996. *See Dennis v. State*, PC-1995-1443.

² *Leroy Dean Dennis v. H.N. "Sonny" Scott, Warden*, CIV-97-989-M.

³ *Leroy Dean Dennis v. H.N. Scott*, 98-6230.

of *Certiorari* in the United States Supreme Court, which was denied on November 1, 1999.⁴ Dennis's Petition for Rehearing was denied by the U.S. Supreme Court on January 10, 2000.⁵ Dennis filed a second application for Post-Conviction Relief, which was denied by the District Court on July 19, 2013. That denial was affirmed by this Court on January 1, 2014.⁶

Dennis then requested authorization to file a successive petition for *habeas* relief in the Tenth Circuit Court of Appeals, but that request was

⁴ *Dennis v. Scott*, 528 U.S. 975, 120 S.Ct. 422, 145 L.Ed.2d 330, 68 USLW 3290, No 99-6083 (U.S., 1999).

⁵ *Dennis v. Scott*, 528 U.S. 1108, 120 S.Ct. 855, 145 L.Ed.2d 721, 68 USLW 3433, No. 99-6083 (U.S. 2000).

⁶ Dennis's second Application for Post-Conviction Relief, filed in the District Court on August 12, 2012 alleged the following claims:

1. An environment of prosecutorial deceit created a wrongful conviction and miscarriage of justice;
2. Dennis's defaulted and procedurally barred constitutional claims are reviewable under the federal miscarriage of justice exception;
3. Ineffective assistance of trial counsel for:
 - a. Failure to interview and investigate the testimony of prosecution eye-witness Denise Thomas who placed Dennis in Oklahoma City on December 7, 1990 and failure to present available impeachment evidence related to her testimony, resulting in constitutional and cumulative error;
 - b. Failure to retain and present evidence from a chemist regarding the use of accelerants, black smoke and the melting of jewelry;
 - c. Failure to adequately present Umbenhower's (victim's boyfriend) false representation of his "low key" relationship with victim Janet Dennis;
 - d. Failure to call Detectives Gravel, Reese and Wilke as witnesses at trial;
 - e. Failure to impeach Umbenhower at trial;
4. Dennis was convicted by the use of false testimony in violation of the 14th Amendment and the U.S. Constitution, Oklahoma Constitution and Oklahoma law;
5. Prosecutorial misconduct;
6. Additional evidence points to Umbenhower rather than Dennis as the perpetrator and establishes a miscarriage of justice; and
7. Cumulative error.

Dennis's second Application for Post-Conviction Relief was denied by the District Court in an order entered and filed by Judge Jones July 19, 2013. That denial was affirmed by this Court in an unpublished order issued January 13, 2014. See *Dennis v. State*, PC-2013-776.

denied.⁷ Dennis's third application for Post-Conviction Relief was filed in the District Court on April 5, 2016, and was stricken from the record pursuant to an order entered and filed August 5, 2016. Dennis's subsequent (fourth) Application for Post-Conviction Relief filed September 15, 2016 was deemed by the District Court to be a third Application for Post-Conviction Relief. On February 27, 2017, Dennis filed a Motion to Vacate Judgment and Sentence which Judge Jones determined was a supplement to Dennis's pending Application for Post-Conviction Relief filed September 15, 2016.

Judge Jones, after reciting Dennis's appellate history in detail, determined that Dennis's claims presented in his most recent Application for Post-Conviction Relief were barred by waiver and *res judicata*. Claims which were previously raised cannot be raised in a subsequent post-conviction proceeding and are barred by *res judicata*; claims which could have been raised but were not are waived. The district court denied Dennis's request for appointment of counsel and his request for an evidentiary hearing. Judge Jones determined that Dennis's claims were barred and denied his request for relief.

We agree. The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a Petitioner with a second direct appeal. *Fowler v. State*, 1995 OK CR 29, ¶2, 896 P.2d 566, 569; *Maines v. State*, 1979 OK CR 71, ¶4, 597 P.2d 774. A claim which could have

⁷ *In re: Leroy Dean Dennis, Movant*, No. 14-6180 (D.C. No., 5:97-CV-00989-M) (W.D. Okla.).

been raised on direct appeal, but was not, is waived. *Fowler*, 1995 OK CR 29 at ¶2, 896 P.2d at 569; *Fox v. State*, 1994 OK CR 52, ¶2, 880 P.2d 383, 384-85; *Dennis v. State*, 1991 OK CR 124, ¶4, 823 P.2d 370, 372. Claims which were raised and addressed in previous appeals are barred as *res judicata*. *Fowler*, 1995 OK CR 29 at ¶2, 896 P.2d at 569; *Walker v. State*, 1992 OK CR 10, ¶6, 826 P.2d 1002, 1004. We have previously addressed the claims presented in Dennis's most recent post-conviction application and will not address them again.

As Petitioner has failed to establish that he is entitled to post-conviction relief, the order of the District Court of Oklahoma County in Case No. CF-1991-994 denying Petitioner's application for post-conviction relief is **AFFIRMED**.

IT IS THE ORDER OF THIS COURT that Petitioner has **EXHAUSTED** his State remedies regarding the issues raised in his numerous applications for relief in Oklahoma County District Court Case No. CF-1991-994. Subsequent application attempting to collaterally appeal Petitioner's convictions in these matters is **BARRED**, and the Clerk of this Court is directed to accept no further filings from Petitioner in these District Court cases without prepayment of filing fees. See, Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018).

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 the delivery and filing of this decision.

The Clerk of this Court is directed to transmit a copy of this order to the District Court Clerk of Oklahoma County; the District Court of Oklahoma County, the Honorable Glenn M. Jones, District Judge; Petitioner and counsel of record.

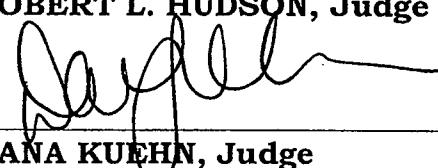
IT IS SO ORDERED.

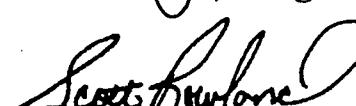
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 7/7
day of May, 2018.


GARY L. LUMPKIN, Presiding Judge

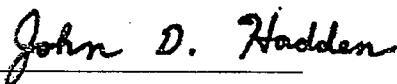

DAVID B. LEWIS, Vice Presiding Judge


ROBERT L. HUDSON, Judge


DANA KUEHN, Judge


SCOTT ROWLAND, Judge

ATTEST:



John D. Hadden
Clerk
PA/F

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

LEROY DEAN DENNIS,)
Petitioner,)
vs.)
THE STATE OF OKLAHOMA,)
Respondent.)

JUL 11 2017

RICK WARREN
COURT CLERK

Case No. CF-1991-99481

**ORDER DENYING PETITIONER'S SUBSEQUENT (FOURTH) APPLICATION FOR
POST-CONVICTION RELIEF, MOTION FOR EVIDENTIARY HEARING, AND MOTION
TO VACATE JUDGMENT AND SENTENCE**

This case comes before the Court on the petitioner Leroy Dean Dennis's third application for post-conviction relief. The Court, having reviewed the Court's Order Striking the Petitioner's Subsequent (Third) Application for Post-Conviction Relief and Brief in Support Thereof from the Record filed on August 5, 2016, the petitioner's Subsequent (Fourth) Application for Post-Conviction Relief, Brief in Support of Subsequent (Fourth) Application for Post-Conviction Relief, Exhibits, Volumes 1 and 2, Appendices, Volumes 1 and 2, and Motion for Evidentiary Hearing on the Material Issues of Fact Presented in this Sebsequent (sic) (Fourth) Application for Post-Conviction Relief, all filed on September 15, 2016, the State's Motion to Strike Application for Post-Conviction Relief filed on October 4, 2016, the petitioner's Response to Respondent's Motion to Strike filed on October 13, 2016, the petitioner's Motion to Vacate Judgment and Sentence filed on February 27, 2017, the Court's Order Denying State's Motion to Strike Application for Post-Conviction Relief entered and filed on March 1, 2017, the State's Response to Third Application for Post-Conviction Relief filed on April 19, 2017, the petitioner's Reply to

State's Response to Petitioner's Subsequent (Fourth) Application for Post-Conviction Relief filed on May 1 and 5, 2017, and the appearance docket for this case, and being fully advised in the premises, finds that:

1. The petitioner was convicted by a jury verdict of guilty of the crime of murder in the first degree; and the jury fixed punishment at life imprisonment without the possibility of parole. On March 17, 1992, the Honorable James L Gullett, District Judge, sentenced the petitioner in accordance with the jury verdict to life imprisonment without the possibility of parole.
2. The petitioner prosecuted a direct appeal of this judgment and sentence to the Court of Criminal Appeals of the State of Oklahoma in *Leroy Dean Dennis v. State of Oklahoma*, Case No. F-92-937, raising the following propositions of error:
 - (a) The appellant was prejudiced and denied a fair trial by the prosecution's failure to provide him with an accurate list of the witnesses to be presented in the State's case-in-chief, as is required by Article II, § 20, Constitution of Oklahoma;
 - (b) The appellant challenges the propriety of testimony given by David Dallas, an investigator with the Oklahoma City Fire Marshall's Office, as not being reliable as no proper foundation had been laid;
 - (c) The trial court erred in not allowing the defense to introduce a video tape found under a bathroom vanity in Janet Dennis's house which allegedly depicted a woman who was shackled, bound, strangled and burned, established at trial that this tape belonged to Jim Umbenhower, Janet Dennis's boyfriend; and that defense counsel should have been allowed to introduce the video tape to establish that Jim Umbenhower had a motive to kill and burn the body of Janet Dennis;
 - (d) The evidence was insufficient to support the appellant's conviction for first degree murder in that because the cause of death was never determined, there was not sufficient evidence from which the jury could have found that appellant caused Janet Dennis's death with malice aforethought as is required by 21 O.S. 1991, § 701.7.

(e) Several improper comments made by the prosecutor were inflammatory and prejudicial:

1. The prosecutor improperly asked the jury during *voir dire* how they would decide hypothetical questions involving facts, in an attempt to predispose the jurors to determine the ultimate issues of fact and law in favor of the prosecution which violated the appellant's right to a fair trial;
2. The prosecutor made improper remarks which amounted to personal attacks on defense counsel;
3. The prosecutor erred several times throughout the trial by engaging in arguments calculated to inflame the passions of the jury;
4. The prosecutor erred by commenting that the State had proved the required elements of the crime charged and asked the jury to return a guilty verdict, telling the jury that the State expected a verdict of guilty, thus acting improperly by requesting that the jury convict the appellant based upon the prosecutor's personal sense of justice.

3. On May 23, 1994, the Court of Criminal Appeals, by its Opinion published at 879 P.2d 1227, 1994 OK CR 34, affirmed the judgment and sentence of the trial court. Rehearing was denied on September 15, 1994.

4. The petitioner was represented by attorneys, Irven Box and Diane Clowdus, at trial and on appeal.

5. The petitioner filed an application for post-conviction relief on August 23, 1995, raising the following propositions for relief:

(a) The District Court and/or the Oklahoma Court of Criminal Appeals erred in denying the petitioner's motions and writ of *habeas corpus* to dismiss the information filed against the petitioner, as venue/jurisdiction do not lie in Oklahoma County.

(b) The State did not produce sufficient evidence to establish beyond a reasonable doubt that petitioner was the person who killed Janet Dennis and each element of the crime of murder in the first degree.

- (c) The petitioner's conviction is based solely upon circumstantial evidence; and it is reversible error to convict someone when the circumstances used are inconsistent and/or non-existent.
- (d) The District Court committed reversible error in refusing the petitioner's requested instruction to the jury on proof of venue.
- (e) The District Court erred in allowing the prosecution to present testimony, without a proper foundation, of an expert witness when the testimony was not supported by the facts and the evidence.
- (f) The District Court erred in allowing comments by the District Attorney which were improper, prejudicial and inflammatory.
- (g) The District Court committed reversible error by not sustaining the petitioner's demurrer to the evidence as being insufficient and a request for a directed verdict.
- (h) Due to error of the District Court, the petitioner was illegally restrained and tried on a charge of murder in the first degree. The State failed to produce evidence at the petitioner's preliminary hearing to show that a crime was committed in Oklahoma County and that there was probable cause to believe that the petitioner was the person who committed the crime.
- (i) It is reversible error for the District Court to allow hearsay testimony to be adduced at trial and used by the State to convict the petitioner.
- (j) The District Court committed reversible error by allowing the State to place before the trial court and jury immaterial, irrelevant and incompetent evidence and by not preserving the chain of custody of that evidence. This evidence, which was allowed, covered the petitioner with a veil of suspicion.
- (k) The petitioner was denied his constitutional right to a fair trial due to the cumulation of trial errors.
- (l) Due to the jury's lack of guidance during sentencing, the jury's discretion was unchanneled and arbitrary. The petitioner asserts the judgment and sentence of "Life Without the Possibility of Parole" is cruel and unusual punishment and is unconstitutional.
- (m) The District Court committed reversible error when the State was allowed to proceed without providing the petitioner with an accurate list of witnesses the State planned to call in their case-in-chief. This denied the petitioner his right to a fair trial and due process.

(n) The petitioner received ineffective assistance of trial counsel under the authority of *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984), when counsel failed to properly investigate the petitioner's alleged crime, to perform evidentiary tests for rebuttal testimony, and to file motions protecting the petitioner's constitutional rights.

(o) The petitioner received ineffective assistance of appellate counsel under the authority of *Evits v. Lucy*, 469 U.S. 387, 83 L.Ed.2d 821, 828-9, 105 S.Ct. 830 (1985) when counsel failed to prepare proper briefs citing authorities for argument and to allege all trial errors for appellate review.

The Honorable Daniel L. Owens, District Judge, denied the petitioner's application for post-conviction relief by his order entered and filed on November 29, 1995.

6. The petitioner appealed Judge Owens's November 29, 1995, order denying the petitioner's application for post-conviction relief to the Oklahoma Court of Criminal Appeals in *Leroy Dean Dennis v. State of Oklahoma*, PC-1995-1443, in which he raised the following propositions of error:

(a) The District Court erred in failing to enter findings of fact and conclusions of law "in regards to [Petitioner's] objection allowing the District Attorney to file their response to the post-conviction [application] out of time and without leave of the court."

(b) Ineffective assistance of trial counsel when "counsel failed to properly investigate [Petitioner's] alleged crime, to perform evidentiary tests for rebuttal testimony, and to file motions protecting [Petitioner's] constitutional rights."

(c) Ineffective assistance of appellate counsel when "counsel failed to prepare proper briefs citing authorities for argument and to allege all trial errors for appellate review."

(d) The District Court and the Court of Criminal Appeals erred "in denying Petitioner's motions and writ of *habeas corpus* to dismiss the Information filed against Petitioner, as venue/jurisdiction does not lie in Oklahoma County."

(e) "The State did not produce sufficient evidence to establish beyond a reasonable doubt [Petitioner] was the person who killed Janet Dennis and each element of the crime of Murder in the First Degree."

- (f) “[Petitioner’s] conviction is based solely upon circumstantial evidence. It is reversible error to convict someone when the circumstances used are inconsistent and/or non-existent.”
- (g) “The District Court committed reversible error in refusing [Petitioner’s] requested instruction to the jury on proof of venue.”
- (h) “The trial court erred in allowing the prosecution to present testimony, without a proper foundation, of an expert witness when the testimony was not supported by the facts and the evidence.”
- (i) “The District Court erred in allowing comments by the District Attorney which were improper, prejudicial and inflammatory.”
- (j) “The District Court committed reversible error by not sustaining [Petitioner’s] demurrer to the evidence as being insufficient and a request for a directed verdict.”
- (k) “Due to error of the District Court, [Petitioner] was illegally restrained and tried on a charge of Murder in the First Degree. The State failed to produce evidence at [Petitioner’s] preliminary hearing to show a crime was committed in Oklahoma County and there was probable cause to believe [Petitioner] was the person who committed the crime.”
- (l) “It is reversible error for the trial court to allow hearsay testimony to be adduced at trial and used by the State to convict [Petitioner].”
- (m) “The District Court committed reversible error by allowing the State to place before the trial court and jury immaterial, irrelevant and incompetent evidence and by not preserving the chain of custody of that evidence. This evidence, which was allowed covered the [Petitioner] with a veil of suspicion.”
- (n) “[Petitioner] was denied his constitutional right to a fair trial due to the cumulation of trial errors.”
- (o) “Due to the jury’s lack of guidance during sentencing, the jury’s discretion was unchanneled and arbitrary. [Petitioner] asserts the Judgement and Sentence of ‘Life Without the Possibility of Parole’ is cruel and unusual punishment and is unconstitutional.”
- (p) “The District Court committed reversible error when the State was allowed to proceed without providing the [Petitioner] with an accurate list of witnesses the State planned to call in their case-in-chief. This denied [Petitioner] his right to a fair trial and due process.”

On June 18, 1996, the Court of Criminal Appeals entered and filed its Order Affirming Denial of Application for Post-Conviction Relief.

7. The petitioner filed a petition for a writ of *habeas corpus* in the United States District Court for the Western District of Oklahoma, *Leroy Dean Dennis v. H. N. "Sonny" Scott, Warden*, CIV-97-989-M. The petitioner alleged ineffective assistance of trial counsel and presented the following new evidence:

(a) An affidavit from Denise Thomas's music teacher stating that: the school play Ms. Thomas referred to was performed on December 13, 1990; there were ten rehearsals for the play; and the last rehearsal was on the date the play was presented, just before it started; and a purported cover sheet from the play program reflecting the December 13th date was attached to this affidavit.

(b) An affidavit from a private investigator who interviewed Denise Thomas and was informed that the play was "Scrooge" and that the rehearsal she referred to in her trial testimony occurred one hour before the actual production.

8. The United States District Court denied the petitioner's petition for a writ of *habeas corpus*; and the petitioner appealed this judgment to the United States Court of Appeals for the Tenth Circuit in *Leroy Dean Dennis v. H. N. Scott*, 98-6230, raising the following propositions of error:

(a) The appellant's "trial attorney was constitutionally ineffective in several respects."

1. Trial counsel "should have accepted the trial court's offer of a continuance to investigate the testimony of Denise Thomas;"
2. Trial counsel "should have investigated her testimony;"
3. Trial counsel "should have filed a motion to compel the prosecution to give the defense a list of witnesses with a summary of their anticipated testimony;"

4. Trial counsel "failed to call police officers who had evidence that appellant did not commit any overt act, crime or violent act against the victim;" and

5. Trial counsel "failed to conduct evidentiary tests or call witnesses to rebut the testimony of the prosecution's expert arson witness."

(b) The appellant is entitled to an evidentiary hearing on his Sixth Amendment claim.

The United States Court of Appeals did not consider the petitioner's fourth and fifth claims of ineffectiveness because they were raised for the first time on appeal.

9. The United States Court of Appeals affirmed the judgement of the United States District Court by its Order and Judgment entered on June 17, 1999, *Dennis v. Scott*, 185 F.3d 873 (Table), 1999 WL 397402 (C.A. 10 (Okla.) 1999). In its Order and Judgement, the United States Court of Appeals states in part:

"The issue of whether appellant received ineffective assistance of counsel is a mixed question of law and fact that we review *de novo*. See *United States v. Prows*, 118 F.3d 686, 691 (10th Cir. 1997). Having conducted a *de novo* review of the state trial record, we agree with the district court that appellant failed to establish prejudice within the meaning of the *Strickland* test. We reach this conclusion for substantially the reasons stated in the magistrate judge's report and recommendation of January 22, 1998."

"We also affirm on the alternate basis that appellant failed to show that his counsel's performance fell below an objective standard of reasonableness. Appellant argues strenuously that his counsel did not take the continuance offered to him because he did not want to spoil his weekend by working. In an affidavit filed with the district court, counsel vehemently denies this characterization of his performance."

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.' *Strickland*, 466 U.S. at 689. The court must presume that counsel's conduct 'falls within the wide range of reasonable professional assistance.' *Id.*"

"It is clear from the record, read in context, that counsel dealt with what he believed to be unfair surprise by requesting a continuance. As justification for the continuance, he focused on the unfairness of limiting his investigation and preparation time to the weekend. Unfortunately for appellant, counsel's strategic move did not bear fruit, because the trial court denied the request. We cannot say, however, that it showed deficient performance on counsel's part."

"It is unclear what additional efforts counsel made to investigate Denise Thomas's testimony prior to and during the defense phase of the trial. In other aspects, however, counsel amply fulfilled his constitutional duties. He objected on several occasions to the challenged testimony, and laid the groundwork for appeal by requesting a mistrial. He interviewed Ms. Thomas and obtained information that he presented to the court in an effort to have her testimony excluded in its entirety. On cross-examination, he brought out inconsistencies in Ms. Thomas's prior statements and obtained from her the admission that she had not seen appellant's face on the day in question. Although he did not uncover the discrepancy in her chronology, he did present evidence in the defense case that suggests appellant was not in Oklahoma City at the time specified. Given this performance, we cannot say that counsel was not functioning as counsel guaranteed by the Sixth Amendment. See *Strickland*, 466 U.S. at 687."

>>>>>>>>>>>>>>>>>>>>>>

"Appellant does not rely on a new rule of constitutional law. Although he claims to have exercised due diligence to discover the information in the affidavits, he fails to provide an adequate explanation why he was unable to do so during the three-year gap between the affirmance of his conviction on appeal and the filing of his habeas petition. Finally, he fails to show that the facts underlying his claim would support a finding that he was actually innocent of the underlying offense. In short, appellant fails to satisfy any of the post-AEDPA requirements for an evidentiary hearing. For this reason, he fails to make a 'substantial showing of the denial of a constitutional right' as to his evidentiary hearing issue. 28 U.S.C. § 2253(c)(2)."

10. The petitioner filed in the United States Supreme Court a petition for writ of *certiorari* to the United States Court of Appeals for the Tenth Circuit which was denied by the United States Supreme Court on November 1, 1999, in *Dennis v. Scott*, 528 U.S. 975, 120 S.Ct. 422, 145 L.Ed.2d 330, 68 USLW 3290, No. 99-6083 (U.S., 1999). His petition for rehearing was denied by the United States Supreme Court on January 10, 2000, in

Dennis v. Scott, 528 U.S. 1108, 120 S.Ct. 855, 145 L.Ed.2d 721, 68 USLW 3433, No. 99-6083, (U.S.,2000).

11. In his second application for post-conviction relief filed on August 13, 2012, the petitioner raised the following propositions for relief:

(a) Newly discovered evidence renders the petitioner's conviction and continued incarceration illegal and unconstitutional under the Constitution of the United States and Constitution of Oklahoma and constitutes a miscarriage of justice:

1. An environment of prosecutorial deceit created a wrongful conviction and miscarriage of justice;
2. The evidence and authority presented in Propositions Three (3) through Six (6) meet the actual innocence and miscarriage of justice standards of 20 O.S. 2001, § 3001.1, *Valdez v. State*, 46 P.3d 703, 2002 OK CR 20, and *Slaughter v. State*, 108 P.3d 1052, 2005 OK CR 6.

(b) The petitioner's defaulted and procedurally barred constitutional claims are also reviewable under the federal miscarriage of justice exception.

(c) The petitioner was denied the effective assistance of counsel at trial and on direct appeal as guaranteed by the Constitution of Oklahoma and Constitution of the United States:

1. Failure to interview and investigate the testimony of Denise Thomas, the sole prosecution eye-witness placing the petitioner in Oklahoma City on December 7, 1990, and failure to present available evidence that impeaches her testimony:

(a) Defense counsel was ineffective for failing to request a continuance and/or investigate the background and basis of Ms. Thomas's testimony during the defense case;

(b) Investigation and impeachment of Ms. Thomas's testimony would have supported petitioner's alibi by his mother, Macel Dennis;

(c) The prejudice from this constitutional error must be considered cumulatively with other errors in this case.

2. Counsel failed to retain and present evidence from a chemist regarding the use of accelerants, black smoke, and the melting of jewelry:

(a) Expert testimony from a chemist should have been presented to refute the accelerant argument and explain if an accelerant was used in the fire, traces of the accelerant would have remained in the soil, refuting the prosecution's argument the accelerants "burned off";

(b) An expert could have testified the melting point of alloy or jewelry gold is much lower than pure gold and is not indicative that an accelerant was used on brush piles.

3. Trial counsel failed to adequately present Umbenhower's false representation of his "low key" relationship with Janet Dennis;

4. Trial counsel was ineffective for failing to call Detectives Gravel, Reese and Wilke as witnesses at the trial;

5. Trial counsel failed to impeach Umbenhower and introduce available evidence to establish overt acts in furtherance of Janet Dennis's abduction and murder and his motive, means and opportunity to induce Janet Dennis to voluntarily leave her home to come to Fort Sill or meet him at the airport:

(a) Counsel failed to adequately defend the motion *in limine* regarding the glaring admission by Umbenhower before and after his first polygraph exam that Janet Dennis promised to come to Lawton the evening of December 7, 1990, and failed to raise the Court's ruling on direct appeal;

1. Overt Act No. 1: Luring Janet Dennis away from her house to come to Fort Sill was an overt act in furtherance of her abduction and murder;

2. Overt Act No. 2: Trial counsel failed to provide the full details of Umbenhower's Overt Act No. 2: His continued effort to guide law enforcement to the petitioner's farm one hundred (100) miles from Oklahoma City where he knew her remains

were located which established his "guilty knowledge";

3. Overt Act No. 3: Trial counsel failed to adequately present the inconsistencies between Umbenhower's statements and testimony, Pam Milton's statements, and direct evidence refuting "his low key relationship", and establishing Overt Act No. 3: His efforts to conceal the truth about his motive to murder;

4. Overt Act No. 4: Destruction and tampering with evidence: two (2) days after Janet Dennis's disappearance, on December 9, 1990, Umbenhower searches Janet Dennis's house to destroy evidence;

5. The available cumulative evidence establishes that in December 1990, Jim Umbenhower was the apex of a classic love triangle involving Pam Milton and Janet Dennis that threatened his future with Pam Milton and his military career;

6. Failure to impeach Umbenhower's alibi.

(d) The petitioner was convicted by the use of false testimony in violation of the Fourteenth Amendment to the Constitution of the United States, the Constitution of Oklahoma, and Oklahoma law:

1. Denise Thomas's testimony that the petitioner was in Oklahoma City on December 7, 1990;

2. Excessive heat and black smoke is no indication of an accelerated fire;

3. The prosecution failed to disclose to the defense that psychics were used to locate the area on the petitioner's land where the bones were discovered; and law enforcement still provides conflicting information about the psychics, who hired them, who and what information was provided.

(e) Prosecutorial misconduct - false argument:

1. Macy's false argument that Umbenhower could not be the killer because "he hasn't got the guts";

2. Jim Umbenhower not the petitioner - has the propensity for violence;
3. Umbenhower could not plant the bones on Dennis's land because he did not have a four (4) wheel drive vehicle that was required by the terrain;
4. False argument that the bones were not laying on the ground in plain sight;
5. Macy's argument falsely minimizing the petitioner's consent to search his land.

(f) Additional evidence points to Umbenhower rather than the petitioner as the perpetrator and establishes a miscarriage of justice:

1. It was impossible for the petitioner to transport Janet Dennis's body in his pickup and at the same time take her SUV to the airport;
2. The facts clearly indicate someone other than petitioner displayed Janet Dennis's bones in open view across the road from his ranch in rural Seiling, Oklahoma.

(g) Cumulative consideration of evidence, errors and prejudice: the combined effect of errors deprived the petitioner of a fair trial.

The relief sought was an evidentiary hearing on the issues presented, vacation of his conviction and sentence, and a new trial or, in the alternative, a modification of his sentence to life imprisonment with the possibility of parole.

12. The undersigned District Judge denied the petitioner's second application for post-conviction relief by his Order Denying Motion for Evidentiary Hearing and Denying Second Application for Post-Conviction Relief entered and filed in this case on July 19, 2013. The petitioner appealed this order to the Oklahoma Court of Criminal Appeals in *Leroy Dean Dennis v. The State of Oklahoma, Mike Addison, Warden*, PC-2013-776, raising the following propositions of error:

(a) The District Court committed error by denying the petitioner's second application for post-conviction relief.

(b) The District Court failed to act under the statutory authority stated in 20 O.S. § 3001.1:

1. The prosecution endorsed and sponsored false eye-witness testimony;

2. The expert arson witness provided forensic arson testimony to the jury that was false, unscientific and outdated;

3. A claim of actual innocence can be decided by the Court when there is no evidence in the record that shows the crime charged was committed in that county;

4. The District Court committed a jurisdictional rights violation when there is no evidence in the record that shows the crime charged was committed in that county.

(c) The District Court committed error by denying the petitioner an evidentiary hearing on the issues and to adjudicate those issues raised in a second application for post-conviction relief.

13. On January 13, 2014, the Oklahoma Court of Criminal Appeals entered and filed its Order Affirming Denial of Subsequent Application for Post-Conviction Relief in which the Court states:

"Petitioner has failed to establish that the District Court erred or abused its discretion, and has failed to establish entitlement to any relief in this subsequent post-conviction proceeding. Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments, particularly in a subsequent post-conviction proceeding. *Logan v. State*, 2013 OK CR 2, ¶3, 293 P.3d 969, 973. All issues that were previously raised and ruled on by this Court in Petitioner's direct appeal or his previous post-conviction application are procedurally barred from further review under the doctrine of *res judicata*. 22 O.S. 2011, § 1086; *Logan, supra*. All issues that could have been but were not raised in Petitioner's direct appeal or his previous post-conviction application are waived for further review. *Id.* Petitioner's complaints about two witnesses who testified at his trial, and his complaints about evidence linking his crime to Oklahoma County either were or could have been raised and adequately addressed during his trial, in his direct appeal, or in his previous post-conviction proceeding. This Court finds no sufficient reason why the issues were not

asserted or were inadequately raised in his prior proceedings. *Id.* Petitioner has not established a material issue of fact such that an evidentiary hearing should be held. 22 O.S. 2011, §§ 1083, 1084. Therefore, the order of the District Court of Oklahoma County denying Petitioner's motion for evidentiary hearing and denying his second application for post-conviction relief in Case No. CF-1991-994 should be, and is hereby, **AFFIRMED.**"

14. The petitioner sought authorization for a second or successive *habeas* relief in the United States Court of Appeals for the Tenth Circuit, *In re: Leroy Dean Dennis, Movant*, No. 14-6180 (D.C. No., 5:97-CV-00989-M) (W.D. Okla.) which was denied. In an Order entered for the Court by the Clerk of Court and filed on September 23, 2014, it is stated:

"Mr. Dennis seeks to bring two new claims: first, he asserts he is actually and factually innocent of the crime for which he was convicted; second, he contends that false, unscientific, and outdated forensic testimony about arson was presented to the jury. He contends that his first claim relies on a new rule of law and newly discovered evidence."

>>>>>>>>>>>>>>>>>>>>>>>>

"His newly discovered evidence supports both his first and second proposed claims. The new evidence is two reports by Dr. Andrew Armstrong, a specialist in fire debris. These reports rebut trial testimony from two of the state's witnesses that the black color of the smoke coming from burn piles on Mr. Dennis's property established the presence of an accelerant. These reports are from 2009 and 2010. Mr. Dennis states that he did not realize that his attorney should have recognized this issue 'until he employed the services of a different attorney to do a detailed analysis of the case.' Mot. for Auth. at 7."

"Under these circumstances, the factual predicate for Mr. Dennis's actual-innocence claim and his claim regarding the testimony of the state's arson witnesses could have been discovered earlier with the exercise of due diligence. Mr. Dennis knew of his alleged innocence at the time of his first *habeas* proceeding and he could have secured the services of an arson expert to support his claims, as he ultimately did in 2009 and 2010. Moreover, Dr. Armstrong's statements - that the color of the smoke does not determine whether an accelerant was used and that diesel fuel, if it was used, should have been detected in the soil samples - are not 'sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [Mr. Dennis] guilty of the underlying offense.' 28 U.S.C. § 2244(b)(2)(B)(ii)."

15. Excluding a timely appeal, the Post-Conviction Procedure Act "encompasses and replaces all common law and statutory methods of challenging a conviction or sentence." 22 O.S. 2011 § 1080. The Court deems the petitioner's Motion to Vacate Judgement and Sentence filed on February 27, 2017, as a supplement to his pending application for post-conviction relief.

16. The petitioner filed a Subsequent (Third) Application for Post-Conviction Relief and Brief in Support of Subsequent (Third) Application for Post-Conviction Relief on April 5, 2016, which were stricken from the record by the undersigned District Judge in his Order Striking the Petitioner's Subsequent (Third) Application for Post-Conviction Relief and Brief in Support Thereof from the Record entered and filed on August 5, 2016. The petitioner's Subsequent (Fourth) Application for Post-Conviction Relief filed on September 15, 2016, is therefore deemed by the Court to be his third application for post-conviction relief.

17. In his current application for post-conviction relief as supplemented by the petitioner's Motion to Vacate Judgment and Sentence, the petitioner raises the following propositions for relief:

(a) False testimony from a surprise eye-witness, Denise Thomas, false and unscientific forensic arson testimony from David Dallas, an investigator with the Oklahoma City Fire Marshall's Office, and false and unscientific forensic arson testimony from a lay person, Kevin Rowland, a state medical examiner's investigator, all resulted in the reasonable likelihood that this false testimony affected the judgment of the jury in rendering its verdict in violation of the 5th and 14th Amendments to the United States Constitution and Article II, § 20, Constitution of Oklahoma.

(b) When the false testimonial evidence from Denise Thomas, David Dallas, and Kevin Rowland is removed from consideration and the sworn testimony of the case detectives, Detectives Gravel and Wilke, presented in pretrial proceedings but not at trial, is taken under consideration, the evidence is insufficient to sustain the petitioner's conviction.

(c) Material issues of fact exist with the discovery of witnesses and evidence, Affidavit of Cordelia Bennett and Affidavit of Andrew T. Armstrong, Ph.D., which show that Denise Thomas, David Dallas, and Kevin Rowland have testified falsely.

(d) The petitioner's constitutional right to be tried within the jurisdiction where the alleged crime was committed was violated by the Oklahoma County District Court as the record is totally devoid of a scintilla of any evidence (criminal or overt acts(s)) of a crime or criminal activity perpetrated by the petitioner within the jurisdictional boundaries of the Oklahoma County District Court.

(e) The petitioner's conviction is in violation of 21 O.S. 1991 § 701.7(A) in that the record is completely void of a scintilla of evidence of the following elements of murder in the first degree: that the death of Janet Dennis was unlawful; that the death of Janet Dennis was caused by the petitioner; and that the death of Janet Dennis was caused with malice aforethought.

(f) The petitioner's conviction is in violation of 21 O.S. 2011 § 693 which provides that no person can be convicted of murder unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt.

(e) Ineffective assistance of trial counsel and appellate counsel:

(1) Failure of trial counsel to specifically insist upon a witness list including witness's addresses and statements who the prosecution plans to call in its case-in-chief where Article II, Section 20, Constitution of Oklahoma, requires that in a capital case, at least two days before the case is called for trial, the accused shall be furnished with a list of the witnesses that will be called in chief, to prove the allegations of the indictment or information, together with their postoffice addresses;

(2) Failure of trial counsel to accept the trial court's offer of a two day continuance to investigate the proposed testimony of Denise Thomas and to discover and present the impeachment evidence from Cordelia Bennett;

(3) Failure of trial counsel to investigate the arson testimony of David Dallas and Kevin Rowland and present impeachment / rebuttal evidence at trial;

(4) Failure of appellate counsel to investigate the accuracy of the trial testimony of Denise Thomas, David Dallas, and Kevin

Rowland after the trial concluded, and to present these false testimony issues on direct appeal.

The relief requested is an evidentiary hearing for the Court to consider and evaluate the evidence after the false testimony is removed from consideration, vacation of the petitioner's conviction, and a new trial.

18. The Post-Conviction Procedure Act, 22 O.S. 2011 § 1080 et seq., is neither a substitute for a direct appeal nor a means of providing a second direct appeal. *Fowler v. State*, 1995 OK CR 29, 896 P.2d 566; *Maines v. State*, 1979 OK CR 71, 597 P.2d 774. A petitioner seeking post-conviction relief has very limited grounds upon which to collaterally attack a judgment and sentence. *Logan v. State*, 2013 OK CR 2, 293 P.3d 969. Issues that were previously raised and ruled upon by the Oklahoma Court of Criminal Appeals are procedurally barred from further review under the doctrine of *res judicata*. *Logan v. State*, *supra*. A claim which could have been raised on direct appeal and was not is waived. *Murphy v. State*, 2005 OK CR 25, 124 P.3d 1198; *Fowler v. State*, *supra*; *Fox v. State*, 1994 OK CR 52, 880 P.2d 383; *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370; *Logan v. State*, *supra*.

19. Pursuant to 22 O.S. 2011 § 1086, all grounds for relief available to an applicant must be raised in the original, supplemental or amended application for post-conviction relief, and any ground finally adjudicated or not so raised may not be the basis for a subsequent application.

20. The petitioner's propositions for relief in his third application for post-conviction relief are barred by *res judicata* and waiver, *Slaughter v. State*, 1998 OK CR 63, 969 P.2d 990, *Murphy v. State*, *supra*; *Fowler v. State*, *supra*; *Fox v. State*, *supra*; *Johnson v. State*, *supra*; *Logan v. State*, *supra*; 22 O.S. 2011 § 1086.

21. The petitioner's third application for post-conviction relief can be disposed of on the pleadings and the record, and an evidentiary hearing is not necessary. 22 O.S. 2011 § 1084. The petitioner's motion for evidentiary hearing on the issues presented in this application for post-conviction relief should be denied.

22. The petitioner's request for appointment of counsel should be denied.

23. The petitioner's third application for post-conviction relief and motion to vacate judgment and sentence should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petitioner's request for appointment of counsel is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's motion for evidentiary hearing filed on September 15, 2016, is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's third application for post-conviction relief filed on September 15, 2016, and the petitioner's supplemental Motion to Vacate Judgment and Sentence filed on February 27, 2017, are denied.

Dated this 11th day of July, 2017.

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JUL 11 2017

RICK WARREN COURT CLERK
Oklahoma County


GLENN M. JONES
DISTRICT JUDGE

22 O.S. 2011 §1087. Appeal to Court of Criminal Appeals

A final judgment entered under this act [Uniform Post-Conviction Procedure Act, 22 O.S. § 1080 et seq.] may be appealed to the Court of Criminal Appeals on petition in error filed either by the applicant or the state within thirty (30) days from the entry of the judgment. Upon motion of either party on filing of notice of intent to appeal, within ten (10) days of entering the judgment, the district court may stay the execution of the judgment pending disposition on appeal; provided, the Court of Criminal Appeals may direct the vacation of the order staying the execution prior to final disposition of the appeal.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2017, file stamped, certified copies of the foregoing order were mailed by first class United States mail, postage thereon prepaid, to:

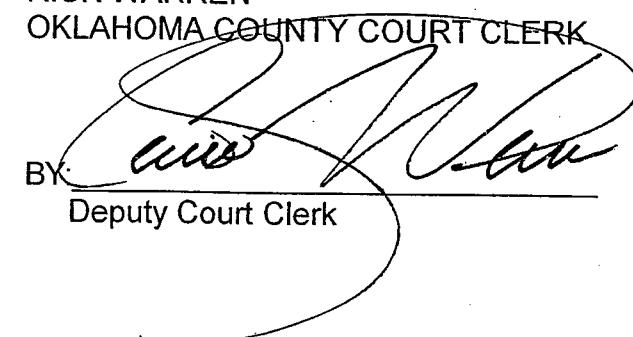
Leroy Dean Dennis #204490
Joseph Harp Correctional Center
P.O. Box 548 J-D-154
Lexington, OK 73051-0548

David W. Prater, District Attorney
Jennifer M. Hinsperger, Asst. District Attorney
320 Robert S. Kerr, Suite 505
Oklahoma City, OK 73102

Dated this 11th day of July, 2017.

RICK WARREN
OKLAHOMA COUNTY COURT CLERK

BY:


Deputy Court Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**