

~~EXHIBIT A~~

~~Appendix A~~

FILED

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEXTER LEEMON JOHNSON,

APR - 6 2018

Petitioner,

v.

No. PC-2017-1277

STATE OF OKLAHOMA,
(MUSKOGEE COUNTY),

Respondent.

**ORDER AFFIRMING DENIAL OF SUBSEQUENT
APPLICATION FOR POST-CONVICTION RELIEF**

The Petitioner has appealed to this Court from an order of the District Court of Muskogee County denying his subsequent application for post-conviction relief in Case No. CF-1994-995. In that case, Petitioner was convicted by a jury of one count of Shooting With Intent to Kill, and was sentenced in accordance with the jury's verdict to one-hundred fifty (150) years imprisonment. Petitioner appealed to this Court and his Judgment and Sentence was affirmed. *Johnson v. State*, No. F-1996-482 (Okl. Cr. April 22, 1997) (not for publication). Petitioner has previously filed applications for post-conviction relief that were denied by the District Court, and on appeal, relief was denied by this Court. *E.g. Johnson v. State*, No. PC-2015-978 (Okl. Cr. December 22, 2015) (not for publication); *Johnson v. State*, No. PC-2015-557 (Okl. Cr. July 23, 2015) (not for publication); *Johnson v. State*, No. PC-1999-1574 (Okl. Cr. February 22, 2000) (not for publication).

In this matter, Petitioner asks to be granted an appeal out of time to file a re-sentencing appeal. Petitioner cites 22 O.S. 2011, § 837 to argue "there was

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reasonable ground of doubt in which of two or more degrees of the crime charged . . . that [he] was guilty of" and thus he should have been convicted and sentenced to the lesser included offense of assault and battery with a dangerous weapon by use of a firearm. However, Petitioner's jury did not find any reasonable doubt concerning the degree of offense for which he should be convicted, and convicted him of Shooting With Intent to Kill.

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 upon by this Court in Petitioner's direct appeal or his previous post-conviction applications are procedurally barred from further review under the doctrine of *res judicata* and all issues that could have been previously raised but were not are waived for further review. 22 O.S.2011, § 1086; *Logan, supra*. The issue Petitioner raises in this subsequent post-conviction proceeding either was or could have been raised in his previous applications for post-conviction relief and is therefore procedurally barred by *res judicata* or waiver. *Id.* This Court finds no sufficient reason why Petitioner's current ground for relief was not asserted or was inadequately raised in his prior applications. *Id.*

Therefore, the order of the District Court of Muskogee County denying Petitioner's subsequent application for post-conviction relief in Case No. CF-1994-995 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the

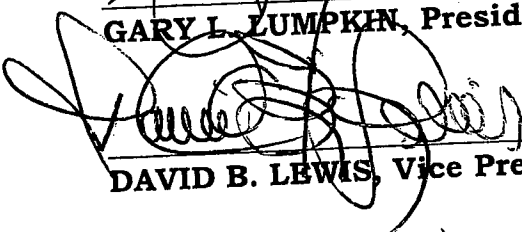
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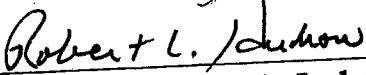
MANDATE is ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court. Petitioner's state remedies are deemed exhausted on all issues raised in his petition in error, brief and any prior appeals. Rule 5.5, Rules, *supra*.

IT IS SO ORDERED.

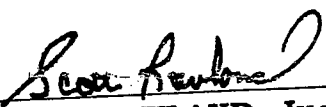
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 6th day
of April, 2018.


GARY L. LUMPKIN, Presiding Judge

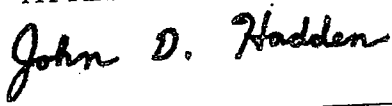

DAVID B. LEWIS, Vice Presiding Judge


ROBERT L. HUDSON, Judge


DANA KUEHN, Judge


SCOTT ROWLAND, Judge

ATTEST:


Clerk

PA

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IN THE DISTRICT COURT FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
Plaintiff,

vs.

Case No. CF-1994-995

DEXTER LEEMON JOHNSON
Defendant.

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
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PAULA SEXTON
COURT CLERK

ORDER

This matter is before the Court on Defendant's Application for Post-Conviction Relief. The Court, having examined the record herein and being fully advised of the premises, finds as follows:

1. Defendant was convicted at jury trial of shooting with intent to kill, and on April 15, 1996, was sentenced to 150 years.
2. On direct appeal, the conviction was affirmed.
3. In his first Application for Post-Conviction Relief, Defendant raised four propositions, 1) insufficient evidence, 2) excessive punishment, 3) ineffective assistance of trial counsel, and 4) ineffective assistance of appellate counsel.
4. The Court denied the application in an order on August 10, 1999.
5. In Defendant's second Application for Post-Conviction, he raised five issues, 1) denial of due process due to fraud, collusion and trickery on the part of officers and the Court, claiming there was a discrepancy as to whether the gun was black or chrome, 2) the same issue just worded differently, 3) actual innocence, 4) ineffective assistance of trial counsel, and 5) ineffective assistance of appellate counsel.
6. This application was denied by order of May 15, 2015.
7. That order was affirmed on appeal.
8. In his third Application for Post-Conviction Relief, Defendant raises one issue, that the jury was instructed on the wrong degree of the crime, essentially claiming excessive punishment.

Based upon the foregoing facts, the Court makes the following conclusions of law:

The issue Defendant raises in this third application has been raised before, and it was denied. This issue could have been raised on direct appeal, and he cannot now raise the same issue in a subsequent application for Post-Conviction Relief. Therefore, this application must be denied.

It is THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's

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Application for Post-Conviction Relief be and is hereby denied.

Done this 17th day of November, 2017.

Thomas A. Alper
District Judge

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 21 2018

JOHN D. HADDEN
CLERK

DEXTER LEEMON JOHNSON,

Petitioner/Appellant,

v.

THE STATE OF OKLAHOMA (Muskogee

Respondent/Appellee.

No. 116,973

ORDER

Petitioner brings a "Petition in Error," essentially asking this Court to review the Order by the Court of Criminal Appeals denying his request for "an appeal out of time to file a re-sentencing appeal." Inasmuch as this Court lacks jurisdiction to review such a decision by the Court of Criminal Appeals, this cause is hereby dismissed. Art. 7 § 4, Okla.Const.

DONE BY THE ORDER OF THE SUPREME COURT IN CONFERENCE
THIS 21ST DAY OF MAY, 2018.

Yoma W. Gurich
VICE CHIEF JUSTICE

CONCUR: Combs, C.J., Gurich, V.C.J., Kauger, Winchester, Colbert, Reif,
Wyrick, and Darby, JJ.

NO PARTICIPATING: Edmondson, J.

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"Appendix C"