

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

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 24 2018

**JOHN D. HADDEN
CLERK**

JOE JOHNSON, JR.,)	
)	
Petitioner,)	
)	
v.)	No. PC-2018-343
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

**ORDER AFFIRMING DENIAL OF PETITIONER'S
11TH & SUBSEQUENT APPLICATION FOR
POST-CONVICTION RELIEF; HIS MOTION TO VACATE
FOR LACK OF SUBJECT MATTER JURISDICTION;
AND HIS MOTION TO DISMISS CRF-1977-65
UNDER THE MAJOR CRIMES ACT**

The Petitioner has appealed to this Court from an order of the District Court of Seminole County, Case No. CRF-1977-65, denying Petitioner's 11th & subsequent application for post-conviction relief; denying his motion to vacate for lack of subject matter jurisdiction; and denying his motion to dismiss CRF-1977-65 under the major crimes act. In Case No. CRF-1977-65, Petitioner was convicted by a jury of Murder in the First Degree and was sentenced in accordance with the jury's verdict to life imprisonment. He appealed to this Court and his Judgment and Sentence was affirmed. *Johnson v.*

State, 1979 OK CR 65, 597 P.2d 340. Petitioner has previously filed numerous post-conviction proceedings that were denied by the District Court and affirmed if appealed to this Court. *E.g. Johnson, Jr., v. State*, No. PC-2017-645 (Okl.Cr. September 8, 2017) (not for publication); *Johnson, Jr., v. State*, No. PC-2017-362 (Okl.Cr. April 27, 2017) (not for publication); *Johnson, Jr., v. State*, No. PC-2013-1151 (Okl.Cr. April 23, 2014) (not for publication); *Johnson, Jr., v. State*, No. PC-2006-267 (Okl.Cr. June 8, 2006) (not for publication); *Johnson, Jr., v. State*, No. PC-2002-1322 (Okl.Cr. December 12, 2002) (not for publication); *Johnson, Jr., v. State*, No. PC-1999-1163 (Okl.Cr. November 1, 1999) (not for publication).

Petitioner has again 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 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*. 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 applications are waived for further review. *Id.*

Petitioner has not presented new evidence which might refute his guilt. He has not provided any reason why the arguments he makes in this subsequent application for post-conviction relief were not asserted or were inadequately raised in his numerous prior applications. *Id.* Petitioner's arguments are waived and procedurally barred and his state remedies are and have been deemed exhausted on all issues raised in his petition in error, brief and any prior appeals or post-conviction proceedings. Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018).

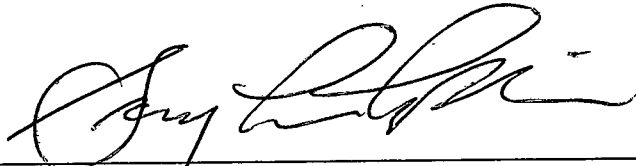
Therefore, the order of the District Court of Seminole County, Case No. CRF-1977-65, denying Petitioner's 11th & subsequent application for post-conviction relief; denying his motion to vacate for lack of subject matter jurisdiction; and denying his motion to dismiss CRF-1977-65 under the major crimes act should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the MANDATE is

ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court.

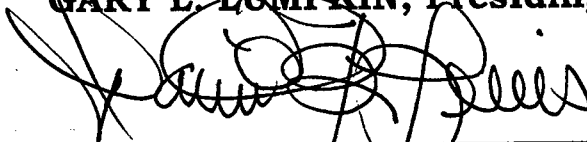
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

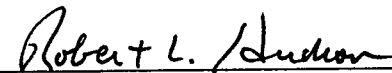
24th day of July, 2018.



GARY L. LUMPKIN, Presiding Judge




DAVID B. LEWIS, Vice Presiding Judge



ROBERT L. HUDSON, Judge

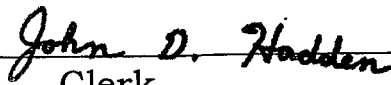


DANA KUEHN, Judge



SCOTT ROWLAND, Judge

ATTEST:



Clerk

PA

IN THE DISTRICT COURT WITHIN AND FOR SEMINOLE COUNTY
STATE OF OKLAHOMA

SEMINOLE COUNTY, OKLAHOMA
FILED
IN DISTRICT COURT

MAR 29 2018

Joe Johnson, Jr.,)
)
 PETITIONER)
)
 vs.)
)
 THE STATE OF OKLAHOMA.)
)
 RESPONDENT.)

KIM A. DAVIS, COURT CLERK
BY _____ DEPUTY

Case No. S-CRF-77-65

ORDER DENYING PETITIONER'S 11TH & SUBSEQUENT APPLICATION FOR POST-CONVICTION RELIEF (Filed 9/13/2017) & MOTION TO VACATE FOR LACK OF SUBJECT MATTER JURISDICTION (Filed 9/25/2017) & MOTION TO DISMISS CRF-1977-65S UNDER THE MAJOR CRIMES ACT (Filed 12/12/2017)

COMES on for Decision PETITIONER'S 11TH & SUBSEQUENT APPLICATION FOR POST-CONVICTION RELIEF (Filed 9/13/2017) & MOTION TO VACATE FOR LACK OF SUBJECT MATTER JURISDICTION (Filed 9/25/2017) & MOTION TO DISMISS CRF-1977-65S UNDER THE MAJOR CRIMES ACT (Filed 12/12/2017) as follows:

1. The Petitioner Joe Johnson, Jr. was convicted of Murder in the First Degree and sentenced on October 31st, 1977 to Life Imprisonment. The Conviction was appealed and said conviction Affirmed in Johnson v. State, 597 P.2d. 340 (Okl. Cr. 1979). The Petitioner has filed numerous pleadings & previous unsuccessful Post Conviction actions.
2. The Petitioner has now filed his 11th & Subsequent Application for Post-Conviction Relief on September 13, 2017 and in conjunction therewith, but subsequently, the Petitioner filed a Motion to Vacate Conviction & a

Motion to Dismiss all of which raise only one plausible new argument which is the Proposition and Claim that the State District Court of Seminole County Oklahoma lacked jurisdiction to prosecute the Defendant at the time, now Petitioner herein, for the reason that the original border of the Seminole Nation had/has not been disestablished by Congress and that the Defendant at the time was an "Indian" within the meaning of the law. Therefore, Petitioner claims that the State of Oklahoma lacked subject matter jurisdiction over the Native American Defendant to prosecute him for commission of a Crime Under the Federal Major Crimes Act.

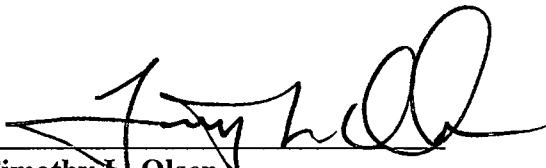
3. Petitioner relies on the 10th Circuit Opinion of **Murphy v. Royal**, 07-7068 ___ F.3d ___, 2017 WL 3389877 . However, The **Murphy** Opinion and Mandate was stayed by Order of the 10th Circuit Court of Appeals pending the United States Supreme Court decision on an announced Petition for Writ of Certiorari November 16, 2017.
4. The 10th Circuit court ruling in **Murphy** is not binding precedent because there is not a mandate. The 10th Circuit issued a Ninety (90) day stay of its Mandate pending the filing of a Writ of Certiorari to the United States Supreme Court. (See States PCR Exhibit A)
5. In addition, the **Murphy** ruling is case specific only to the boundaries of the 1866 muscogee creek nation reservation boundaries. The Murphy decision is particular to the boundaries of the Muscogee Creek Nation Reservation that was established in 1866 and to any Indian who commits

or becomes a victim of a major crime under the Major Crimes Act within the boundaries of the reservation.

6. The Petitioner was convicted of a crime that did not occur within the boundaries of the Muscogee Creek Nation. The ruling has not been extended to the Seminole Nation.
7. Petitioner's Application and Motion to Vacate are **Denied**.
8. Because of this court's ruling, it will not address the State's other arguments as to whether the **Murphy** ruling applies to the Petitioner's case at this time.

IT IS SO ORDERED.

DATED 3-29-18


Timothy B. Olsen
Associate District Judge

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was mailed/delivered on the 29 day of March, 2018, to the following, to-wit:

Joe Johnson, Jr., ODOC# 096004
Joseph Harp Correctional Center
Box 548
Lexington, Oklahoma 73051-0548

Mr. Paul Smith
Office of the District Attorney
Correspondence Box
Office of the Court Clerk
Wewoka, Oklahoma 74884


Noemi Gonzalez, Secretary to
Honorable Timothy L. Olsen

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