

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

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IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

CHARLES C. BREWINGTON,)
Petitioner,)
-vs.-)
STATE OF OKLAHOMA,)
Respondent.)

No. HC-2018-791

SEP - 5 2018

JOHN D. HADDEN
CLERK

**ORDER DECLINING JURISDICTION AND
DISMISSING "PETITION IN ERROR"**

On August 2, 2018, Petitioner, a prisoner held in the custody of the Oklahoma Department of Corrections at a prison facility situated within Cleveland County, filed with the Clerk of this Court a pro se pleading titled "Petition in Error and Appeal Brief in Chief." Attached to that Petition is a certified copy of an order filed by the Honorable Jeff Virgin, District Judge, on July 12, 2018, in the District Court of Cleveland County, Case No. WH-2018-13. That order denies an "Emergency Petition for Writ of Habeas Corpus" that Petitioner filed in the District Court on May 10, 2018. The District Court denied that Application on finding that Petitioner had not exhausted his administrative remedies and had not shown that he was entitled to immediate release. Petitioner is now seeking to appeal Judge Virgin's order.

Petitioner cites no authority for bringing an appeal from an order denying a petition for a writ of habeas corpus.¹ This Court's *Rules*, however, authorize an individual to petition this Court to assume original jurisdiction and grant an extraordinary writ of habeas corpus when that petitioner has been wrongly denied the writ of habeas corpus by a district court having proper venue over the case. Rule 10.1(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018). We will therefore construe Petitioner's "Petition in Error" as a request to invoke this Court's original jurisdiction for the issuance of an extraordinary writ of habeas corpus.

Section X of this Court's *Rules* sets forth the controlling procedures for an original action before this Court for an extraordinary writ. In order to perfect that original proceeding, a petitioner, among other things, must file "[a] certified copy of the original record applicable to the writ which shall include a copy of the order entered by the trial court," and "[a] certified copy of any supporting evidence presented to the District Court upon which the request for relief is predicated." Rule 10.1(C)(2). *See also* Rule 10.5(5) (listing

¹ "An appeal is not a matter of inherent right." *Robinson v. State*, 70 Okl.Cr. 365, 368, 106 P.2d 531, 532 (1940). Instead, an "appeal is a creature of statute and exists only when expressly authorized." *White v. Coleman*, 1970 OK CR 133, ¶ 11, 475 P.2d 404, 406; *accord City of Elk City v. Taylor*, 2007 OK CR 15 ,¶ 7, 157 P.3d 1152, 1154 ("The right to an appeal is a statutory right and exists only when expressly authorized.")

“a certified copy of the original record and either the original or certified copy of the transcript, where appropriate” as being among those documents that must necessarily be filed to perfect an action for an extraordinary writ). Additionally, when a prisoner is seeking a writ of habeas corpus, he “has the burden of establishing confinement is unlawful” and “shall attach a certified copy of both the Judgment and Sentence and the District Court order denying relief with his petition to meet his burden of proof.” Rule 10.6(C).

Although Petitioner has provided this Court with a copy of both his “Emergency Petition for Writ of Habeas Corpus” and the District Court’s order denying that Petition, he has not presented this Court with any other record of the District Court proceedings. Omitted by Petitioner is the State’s “Motion to Dismiss Petitioner’s Emergency Petition for Writ of Habeas Corpus” (filed in the District Court on June 15, 2018) and Petitioner’s “Objection to Motion to Dismiss Petitioner’s Emergency Petition for Writ of Habeas Corpus” (filed on June 27, 2018), both of which documents Judge Virgin states he reviewed before entering his order denying relief. Additionally, and contrary to Rule 10.6(C), Petitioner has not provided this Court with a copy of that Judgment and Sentence under which he believes himself unlawfully held.

Consequently, without a copy of those items that were before the District Court and upon which the District Court relied in

making its rulings, this Court cannot reasonably discern whether the District Court acted properly in denying Petitioner's request for a writ of habeas corpus. Petitioner therefore does not present this Court with a record adequate to meet his burden to show improper denial of relief by the District Court, that his confinement is unlawful, and that he is now entitled to an order from this Court for issuance of a writ of habeas corpus. Accordingly, we **FIND** Petitioner's "Petition in Error and Appeal Brief in Chief" must be dismissed.

In dismissing this action for lack of an adequate record, this Court does not ignore that copy of a document titled "Notice of Intent to Appeal and Designation of Record," which Petitioner has attached to his Petition in Error and which Notice states that it was mailed for filing to the Cleveland County District Court Clerk. Petitioner cannot rely on that document to gain a record from the District Court Clerk, as Section X does not authorize the filing of designations of record in original proceedings. Hence, our *Rules* do not require trial court clerks to prepare and transmit a record pursuant to a designation of record filed with their office in connection with an original action brought in this Court for an extraordinary writ. Instead, Rule 10.1(C) states, "It shall be the responsibility of the petitioner to ensure the record is filed with the Clerk of this Court."

IT IS THEREFORE THE ORDER OF THIS COURT that acceptance of original jurisdiction is **DECLINED**, and Petitioner's August 2, 2018, "Petition in Error and Appeal Brief in Chief" is **DISMISSED**.

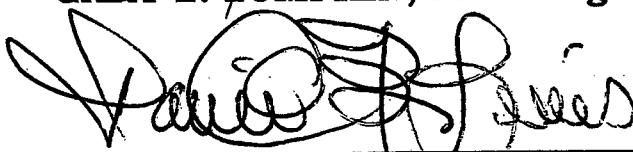
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

5th day of September, 2018.



GARY L. LUMPKIN, Presiding Judge



DAVID B. LEWIS, Vice Presiding Judge

Robert L. Hudson
ROBERT L. HUDSON, Judge

Dana Kuehn - CIR
DANA KUEHN, Judge

Scott Rowland
SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden

Clerk

OA

IN THE DISTRICT COURT OF CLEVELAND COUNTY,
STATE OF OKLAHOMA

CHARLES BREWINGTON,)
Petitioner,)
v.)
STATE OF OKLAHOMA,)
Respondent.)

STATE OF OKLAHOMA
CLEVELAND COUNTY, S.S.
FILED

Case No. WH-2018-13

JUL 12 2018

In the office of the
Court Clerk MARILYN WILLIAMS

ORDER

The Court having received and reviewed the pleadings filed in this matter makes the following finding and orders:

1. On May 10, 2018, Petitioner filed his *Emergency Petition for Writ of Habeas Corpus* in this matter. On May 14, 2018, the Court ordered the State to respond to the same. On June 15, 2018, the State responded with a *Motion to Dismiss Petitioner's Emergency Petition for Writ of Habeas Corpus*. On June 27, 2018, Petitioner filed his *Objection to Motion to Dismiss Petitioner's Emergency Petition for Writ of Habeas Corpus*.
2. After reviewing the above, the Court finds Petitioner has not exhausted his administrative remedies as required by 57 O.S. §§ 564, 566 and *Shelton v. Crisp*, 565 P.2d 53.
3. Further, under *Lee v. State*, 2018 OK CR 14 and *Joseph Jackson v. Terry McCollum*, No. HC-2016-955, the Court finds Petitioner is not entitled to immediate release.
4. Based upon the Court findings above, Petitioner's *Objection to Motion to Dismiss Petitioner's Emergency Petition for Writ of Habeas Corpus* is overruled. Petitioner's *Emergency Petition for Writ of Habeas Corpus* is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's *Objection to Motion to Dismiss Petitioner's Emergency Petition for Writ of Habeas Corpus* is overruled. *Petitioner's Emergency Petition for Writ of Habeas Corpus* is denied.

Dated this 11th day of July, 2018.

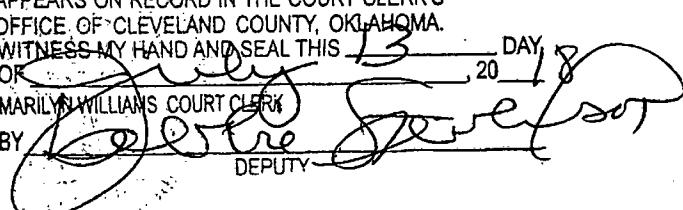


JEFF VIRGIN
DISTRICT JUDGE

Cc: Petitioner
Ammon Brisolara, Attorney General's Office

I HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT AND COMPLETE COPY
OF THE INSTRUMENT HEREWITHE SET OUT AS IT
APPEARS ON RECORD IN THE COURT CLERK'S
OFFICE OF CLEVELAND COUNTY, OKLAHOMA.
WITNESS MY HAND AND SEAL THIS 13 DAY
OF JULY 2018

MARYLYN WILLIAMS COURT CLERK

BY  DEPUTY

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