

# Appendix A

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

IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA

TRAVIS WAYNE BENTLEY,            )  
   )  
                           Petitioner,       )  
   )  
   )  
 -vs-                                    )  
   )  
 STATE OF OKLAHOMA,            )  
   )  
   )  
                           Respondent.   )

JUN 25 2019

**JOHN D. HADDEN**  
**CLERK**

No. PC-2018-743

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

The Petitioner has appealed to this Court from an order of the District Court of Cleveland County denying his Application for Post-Conviction Relief in Case No. CF-2015-1240. In that case, Petitioner entered a blind plea of guilty and was convicted of Count 1 – Manslaughter in the First Degree; Count 2 – Driving Under the Influence (Drugs) Great Bodily Injury; and Count 3 – Unlawful Possession of Drug Paraphernalia. He was sentenced to twenty-five years imprisonment for Count 1, ten years imprisonment for Count 2, and one year imprisonment for Count 3, with all sentences ordered to run concurrently. Petitioner filed a motion to withdraw his plea that was denied by the District Court and affirmed on appeal to this

Court. *Bentley v. State*, No. C-2016-699 (Okla. Cr. February 7, 2017).

Petitioner has failed to establish entitlement to any relief in this post-conviction proceeding. *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294 (it is fundamental that where a post-conviction appeal is filed, the burden is upon the petitioner to sustain the allegations of his petition). Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments and sentences. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. All issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review. 22 O.S.2011, § 1086; *Logan, supra*. Petitioner has not raised any issue in this post-conviction proceeding that could not have been raised prior to the entry of his guilty plea or in a direct appeal from his Judgment and Sentence. All issues are therefore waived or procedurally barred, unless this Court finds sufficient reason why a ground for relief was not previously asserted. *Id.*

Petitioner claims the District Court was required to hold an evidentiary hearing to determine its jurisdiction and resolve the

factual issues of whether Petitioner is an Indian within the meaning of federal law and whether Petitioner's crime was committed on land that is considered Indian country. Again, however, the burden is on Petitioner to sustain the allegations of his application and to establish entitlement to relief in this post-conviction proceeding. *Russell, supra*. Petitioner's arguments concerning federal Indian treaties and other laws could have been previously made; he has not created a material issue of fact; and he has not established sufficient reason to allow his issues to be the basis of this post-conviction application. 22 O.S.2011, §§ 1083, 1086; *Logan, supra*. Petitioner has not established that the District Court lacked jurisdiction in this case. Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma).<sup>1</sup>

Therefore, the order of the District Court of Cleveland County denying Petitioner's Application for Post-Conviction Relief in Case No.

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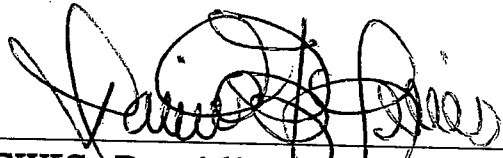
<sup>1</sup> The issue of whether federal courts, rather than Oklahoma courts, should have exercised jurisdiction over crimes committed by or against Indians in Indian country is pending before the United States Supreme Court and thus binding precedent has not been established. See *Murphy v. Royal*, 866 F.3d 1164 (10<sup>th</sup> Cir. 2017); *Murphy v. Royal*, Nos. 07-7068 & 15-7041 (10<sup>th</sup> Cir. November 16, 2017); see also *Royal v. Murphy*, \_\_ U.S. \_\_, \_\_ S.Ct. \_\_, 2018 WL 747674 (Mem) (May 21, 2018).

CF-2015-1240 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the MANDATE is ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court.

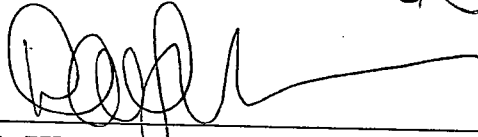
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

25<sup>th</sup> day of June, 2019.



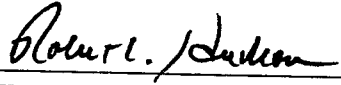
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**DAVID B. LEWIS, Presiding Judge**



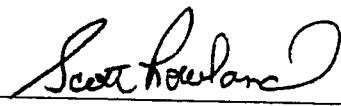
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**DANA KUEHN, Vice Presiding Judge**



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**GARY L. LUMPKIN, Judge**



\_\_\_\_\_  
**ROBERT L. HUDSON, Judge**



\_\_\_\_\_  
**SCOTT ROWLAND, Judge**

ATTEST:

John D. Hadden

Clerk

PA/F

Appendix B

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

**FILED**

JUL 02 2018

In the office of the  
Court Clerk MARILYN WILLIAMS

TRAVIS WAYNE BENTLEY, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

Case No. CF-2015-1240

**ORDER DENYING POST-CONVICTION RELIEF**

The Court has received and reviewed Petitioner’s Application for Post-Conviction Relief. In addition to Petitioner’s initial Application, Petitioner submitted a Supplemental Pleading to Post-Conviction Relief, a Second and Third Supplemental Pleading to Application for Post-Conviction Relief, as well as a Motion for Evidentiary Hearing related to the same. The Court has also reviewed the State’s Combined Response and Sur-Reply to Petitioner’s aforementioned pleadings and Petitioner’s Reply in addition to the court file. Based upon its review, the Court enters this Order denying Petitioner’s request for Post-Conviction relief.

**I. Propositions One, Two and Three – Petitioner’s Challenge to his Sentence is Barred by Waiver/Res Judicata; Petitioner’s Trial and Appellate Counsel were Effective.**

Petitioner pursued a direct appeal of his conviction in this case to the Oklahoma Court of Criminal Appeals in C-2016-0699. Petitioner’s attempt to challenge the legality of his plea failed and his conviction was upheld. Petitioner now challenges the legality of his plea and subsequent sentence based upon a challenge to the constitutionality of 21 O.S. §§12.1 and 13.1.

The Court finds that issues raised by the Petitioner in this Application(s) for Post-Conviction Relief have either already been raised on the direct appeal generally in his challenge of the entry of his blind plea or were capable of being raised but were not and thus they are waived or barred based upon the doctrine of res judicata.

The Court of Criminal Appeals has held that unless an issue was inadequately raised on direct appeal, the doctrine of *res judicata* bars review of that issue on post-conviction relief. See *Castleberry v. State*, 590 P.2d 697 (Okla. Cr. 1979), *Grimes v. State*, 512 P. 2d 231 (Okla. Cr.

1973), *Harrell v. State*, 493 P.2d 461 (Okla. Cr. 1972), *McClesky v. Zant*, 499 U.S. 467, 111 S.Ct. 1454, (1991) and *Johnson v. State*, 823 P. 2d 370, (Okla. Cr. 1991).

Petitioner alleged in his direct appeal that his plea was not knowingly and voluntarily entered, that he entered the plea inadvertently and/or by mistake, further that his plea was invalid due to a conflict of interest that existed between he and his lawyer.

Because Petitioner's challenges to his plea failed on direct appeal, the Court finds that he is barred from attempting to re-litigate issues related thereto. "The doctrine of res judicata does not allow the subdividing of an issue as a vehicle to relitigate at a different stage of the appellate process." *Turrentine v. State*, 965 P.2d 985, 989 (Okla. Cr. 1998). *See also Smith v. State*, 826 P.2d 615, 616 (Okla. Cr. 1992) (finding that new allegations of ineffective assistance of trial counsel are procedurally barred by res judicata on post-conviction review where claim on ineffective assistance, on other grounds, was raised and rejected on direct appeal). "Simply envisioning a new method of presenting an argument previously raised does not avoid the procedural bar." *McCarty v. State*, 989 P.2d 990, 995 (Okla. Cr. 1999). "Petitioner has the burden of establishing that his alleged claim could not have been previously raised and thus is not procedurally barred." *Robinson v. State*, 1997 OK CR 24, 937 P.2d 101, 108. The Court of Criminal Appeals has stated that where a claim is procedurally barred, there is no need to address the merits of the issues presented. *Boyd v. State*, 915 P.2d 922, 924 (Okla. Cr. 1996).

Petitioner has failed to establish either trial counsel or appellate counsel were deficient for having failed to challenge Oklahoma's general sentencing structure and the constitutionality of the 85% rule. Petitioner's crimes resulted in killing one individual and breaking multiple bones including the back of another. Defendant did not contest this evidence at the time of his guilty plea, a plea that the district court "scrupulously" assured was "freely and voluntarily made." *See State's Exhibit 5*. Any issue that could have been previously raised, but were not, are waived, and may not be the basis of subsequent post-conviction application. 22 O.S.2001, § 1086; Rules 2.1(B) & 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2009)*.

It is Petitioner's burden to establish that counsel was ineffective. In order to prove ineffective assistance of counsel, Petitioner must show both that counsel's assistance was deficient and that the deficiency caused prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In this case, Petitioner has not set forth sufficient



evidence to support claims of ineffectiveness. First, Petitioner cites to no authority which adequately challenges either Oklahoma's sentencing guidelines or the constitutionality of 21 O.S. §§12.1 and 13.1. Petitioner entered a voluntary plea of guilty, was advised of the range of punishment and consequences with respect to the offenses to which he pled. Therefore, based upon the argument and authority of the parties, Petitioner's claims that trial and appellate counsel were ineffective are denied as to the voluntariness of his plea. This Court will address the merits of Petitioner's claims that his trial and appellate counsel were ineffective for having failed to challenge the State's jurisdiction based upon his Indian heritage, will be addressed below. With that primer, this Court finds that trial and appellate counsel were constitutionally effective and therefore the averments in furtherance thereof are denied.

Based upon the arguments and authority cited by the State and as contained herein, Petitioner's Propositions One through Three are denied.

## **II. Proposition Four<sup>1</sup> – The State of Oklahoma Had Jurisdiction Over the Defendant in this Case.**

Petitioner has requested this Court set this matter for evidentiary hearing so facts can be established identifying the Defendant as an Indian, as well as, the location of the accident as having occurred exclusively in Indian Country. The Court finds based upon the arguments and authorities included within the pleadings, as well as a review of the attachments submitted by the parties, there is no need to conduct an evidentiary hearing and finds as follows.

The State has set forth sufficient evidence and authority to adequately meet the *Solem* test establishing the location of the accident in question did not occur within Indian country as defined by federal law. *Solem v. Bartlett*, 465 U.S. 463, 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (1984). The *Solem* Court requires the Court examine the text of applicable legislation or statutes as the best indication of congressional intent to diminish or disestablish the original boundaries of an Indian reservation. *Id.*

### **A. *Solem* – Part One**

The Court has examined the “text of the statute[s]”<sup>2</sup> and finds the plain and ordinary language including the Allotment Acts and actions subsequent thereto effectively diminished or

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<sup>1</sup> Petitioner does not set out precise propositions in each of his pleadings in support of Post-Conviction Relief. However, to facilitate an orderly approach to this Order, each issue has been identified as a Proposition.

disestablished the original boundaries of the Citizen Potawatomi Nation reservation. *See State's Exhibit 9 – General Allotment Act; 24 Stat. 388.* In this effort Congress clearly evinced the intent to cause those tribes subject to allotment not only to receive the “benefit” of the civil and criminal laws of the “State or Territory in which they may reside...” but also to “be subject” to them. If the intent of this action did not support the clear intent of the Congress, it went further in March of 1891 through its effort to “cede, relinquish, and forever and absolutely surrender to the United States” the claim title and interest of the Citizen Potawatomi Tribe located in Indian Territory.

### **B. *Solem* – Part Two**

The Court has also examined “events surrounding the passage” of legislation relevant to the establishment and disestablishment of the boundaries of the CPN. For those even casually familiar with Oklahoma history, one recognizes the “land run” as a significant event in the State’s history. As referenced in the State’s brief and in its supporting materials, the well-publicized events and locations concerning the re-settlement of territory contained in and around the original boundaries of the CPN is consistent with and further re-affirms congressional intent to diminish and/or disestablish CPN reservation boundaries.

### **C. *Solem* – Part Three**

Finally the Court examined “events that occurred after the passage” of legislation relevant to CPN boundaries. The Court reviewed the exhibits provided by the parties as well as the supplemental evidence offered in the form of an Affidavit from a CPN Tribal Attorney. The evidence contained within this affidavit not only completes the third part of the *Solem* test which this Court is required to consider, but also establishes conclusively that the location of the incident in question did not occur within Indian country. First, the CPN tribe acknowledges it does not maintain the roadway or provide critical services to the area in the form of police and fire support. Second, the Affidavit indicates the CPN has historically not operated with any assumption that its original borders established prior to 1891 are still intact. As a result, the Court finds the location of the incident in question did not occur in Indian country and regardless of whether the Defendant was an Indian or not, would have been subject to prosecution by the State of Oklahoma for crimes committed outside of Indian country.

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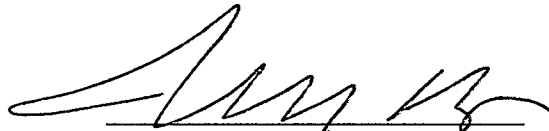
<sup>2</sup> The Court reviewed each of the attachments contained within the State’s Combined Response in support of its conclusion.

**III. Evidentiary Hearing**

Section 1084 of the Post-Conviction Procedure Act provides an evidentiary hearing may be had where the application cannot be disposed of on the pleadings or where there is a material issue of disputed fact. 22 O.S. § 1084. Petitioner’s application contains no material dispute for which an evidentiary hearing is necessary to resolve. Petitioner has “...no constitutional or statutory right to an evidentiary hearing on post-conviction review unless his application cannot be disposed of on the pleadings and the record or a material issue of fact exists.” *Fowler v. State*, 896 P.2d 566, 566 (Okla. Cr. 1995). As Petitioner has failed to demonstrate either, Petitioner’s request for a hearing is denied.

**THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED**, based upon the above and the authority provided by the parties, this Court denies the Petitioner’s Application(s) for Post-Conviction Relief, as well as Petitioner’s Motion for an Evidentiary Hearing and Motion for Appointment of Counsel.

Dated the 2 day of July, 20 18.

  
\_\_\_\_\_  
Jeff Virgin  
Judge of the District Court

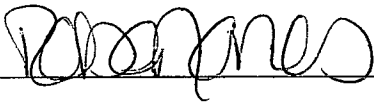
**NOTICE OF RIGHT TO APPEAL**

Under the authority of 22 O.S. § 1087, this order may be appealed to the Court of Criminal Appeals by petition in error filed within thirty (30) days from the entry of the judgment. To do so, a notice of intent to appeal must be filed within ten (10) days of the entry of the judgment. This Court may stay the execution of the judgment pending disposition of the appeal., provided however, the Court of Criminal Appeals may direct the vacation of an order staying the execution prior to final disposition of the appeal.


CERTIFICATE OF SERVICE

This is to certify that a true and correct CERTIFIED COPY of the above and foregoing Order Denying Application for Post-Conviction Relief was mailed ON THE DAY OF FILING.

Travis Bentley, #585018  
James Crabtree Correctional Facility  
216 N. Murray St. 4-E  
Helena, OK 73741

 7-2-18

Deputy Court Clerk

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT AND COMPLETE COPY OF THE INSTRUMENT HEREWITH SET OUT AS IT APPEARS ON RECORD IN THE COURT CLERK'S OFFICE OF CLEVELAND COUNTY, OKLAHOMA. WITNESS MY HAND AND SEAL THIS 2 DAY OF July 2018 COUNTY OF OKLAHOMA  
Marilyn Williams COURT CLERK  
BY  DEPUTY