

APPENDIX

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

DEC - 4 2019

BILLY BATTENFIELD,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

JOHN D. HADDEN
CLERK

No. PC 2019-0576

ORDER AFFIRMING DENIAL OF SUBSEQUENT APPLICATION
FOR POST-CONVICTION RELIEF

On August 8, 2019, Petitioner, *pro se*, filed an appeal of the order of the District Court of Cleveland County, Case No. CF-2011-1822, denying his second application for post-conviction relief. Petitioner entered a negotiated plea to a charge of First Degree Murder. He was sentenced to life without the possibility of parole. He did not seek to timely withdraw his plea or otherwise appeal his conviction.

Petitioner now seeks post-conviction relief challenging effective assistance of counsel. Petitioner argues counsel's failure to file a notice of appeal "was presumptively prejudicial, despite appeal waivers." Petitioner also argues the District Court erred in denying his application.

Appendix 1a

The District Court denied Petitioner's second post-conviction application in an order filed on July 22, 2019. The District Court found counsel could not be ineffective for not filing a notice of appeal for an appeal that was knowingly waived and was terms of a negotiated agreement between the parties. The District Court also found this issue was raised in Petitioner's first application.

The provisions of 22 O.S. 2011, § 1080, are not a substitute for a direct appeal. *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774. Permitting one to by-pass or waive a timely and direct appeal and proceed under 22 O.S. 2011, § 1080, without supplying sufficient reason erodes the limitations and undermines the purpose of the statutory direct appeal. *See Webb v. State*, 1983 OK CR 40, 661 P.2d 904. Moreover, 22 O.S. 2011, § 1086, directs that all grounds for relief available to an applicant under the Post-Conviction Procedure Act must be raised in the original application and that any ground not so raised, or bypassed, may not be the basis for a subsequent application unless sufficient reason is given for not asserting or inadequately raising the issue in the prior application or in any other proceeding taken to secure relief.

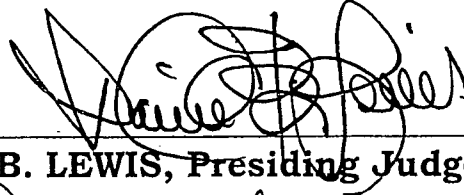
This is Petitioner's second application for post-conviction relief that has been denied in the District Court. The denial of Petitioner's first application for post-conviction relief was appealed to this Court and affirmed in an Order issued February 19, 2019, Appeal No. PC 2018-1163. The issue of ineffective assistance of trial counsel was raised in Petitioner's first post-conviction application and is barred by the doctrine of *res judicata*. Petitioner has not shown the District Court erred in denying his subsequent application for post-conviction relief.

As Petitioner has failed to establish he is entitled to post-conviction relief, the order of the District Court of Cleveland County denying Petitioner's second application for post-conviction relief is **AFFIRMED**. Petitioner has **EXHAUSTED** his State remedies regarding the issues raised in the applications for post-conviction relief. Subsequent application on these issues is **BARRED**. Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). Pursuant to Rule 3.15, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

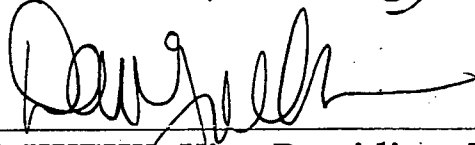
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

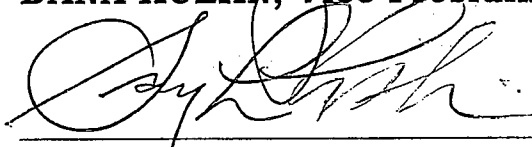
4th day of December, 2019.



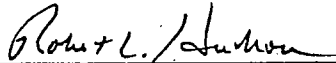
DAVID B. LEWIS, Presiding Judge



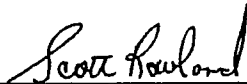
DANA KUEHN, Vice Presiding Judge



GARY L. LUMPKIN, Judge

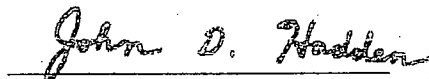


ROBERT L. HUDSON, Judge



SCOTT ROWLAND, Judge

ATTEST:



Clerk

OA

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Clerk's Office.**