

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

MARSHALL HENRY ELLIS,

Petitioner,

-vs.-

THE STATE OF OKLAHOMA,

Respondent.

AUG 21 2019

JOHN D. HADDEN
CLERK

No. PC-2018-1210

**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 Woodward County denying him post-conviction relief in Case No. CRF-1985-59. In that case, Petitioner was charged with Count 1, Murder in the First Degree; Count 2, Shooting With Intent to Kill; Count 3, Assault With Intent to Kill; Count 4, Unlawful Delivery of a Controlled Drug; and Count 5, Possession of a Sawed-Off Shotgun.

On January 10, 1986, Petitioner entered a plea of guilty to Count IV, Unlawful Delivery of a Controlled Drug and Count V, Possession of a Sawed-Off Shotgun, and was convicted and sentenced to two years imprisonment on each count, with the


1080(a) Appendix "A"

sentences ordered to run concurrently. Petitioner did not file a motion to withdraw his plea within applicable time periods, and thus failed to perfect direct appeal proceedings from those convictions and sentences.

From January 27 through February 10, 1986, Petitioner was tried by a jury on Counts 1, 2 and 3. He was convicted of Count 1, Murder in the First Degree, and Count 2, Shooting With Intent to Kill, but was acquitted of Count 3, Assault With Intent to Kill. He was sentenced in accordance with the jury's verdict to life imprisonment on Count 1, and fifty years imprisonment on Count 2, with the sentences ordered to run concurrently. Petitioner appealed to this Court and his Judgment and Sentence on Counts I and II was affirmed. *Ellis v. State*, No. F-1986-676 (Okla. Cr. April 10, 1990) (not for publication). On petition for writ of certiorari, the United States Supreme Court vacated Petitioner's Judgment and Sentence and remanded to this Court for further consideration in light of *Grady v. Corbin*, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990). On remand, this Court found that *Grady* was inapplicable and affirmed Petitioner's Judgment and Sentence on

Counts I and II. *Ellis v. State*, 1992 OK CR 35, 834 P.2d 895. Petitioner has previously filed an application for post-conviction relief that was denied by the District Court and affirmed on appeal to this Court. *Ellis v. State*, No. PC-1997-626 (Okla. Cr. Aug. 5, 1997).

Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments, particularly in subsequent post-conviction proceedings. *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 application 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*. Such issues may not be the basis of a subsequent post-conviction application unless the court finds that there is sufficient reason why the otherwise procedurally barred or waived issues were not previously asserted or adequately raised. *Id.*



All of Petitioner's propositions of error in this subsequent post-conviction proceeding are asserted to support his contention that he acted in self-defense on the day he committed his crimes. This Court thoroughly discussed Petitioner's arguments concerning self-defense in the original direct appeal opinion. *Ellis v. State*, No. F-1986-676 (Okla. Cr. April 10, 1990) (not for publication). Petitioner was not able to establish that his jury was improperly instructed or that self-defense was even available to him because of his own actions during the commission of his crimes. *Id.* Petitioner went to the crime scene to participate in an illegal drug transaction armed with a sawed-off shotgun. *Id.* He admits firing the shotgun blasts that killed and injured the victims in this case. *Id.* All of Petitioner's grounds for relief in this matter are procedurally barred or waived, and there is no reason to allow the grounds to be the basis of this subsequent post-conviction proceeding. 22 O.S.2011, § 1086; *Logan, supra*.

In addition, the Post-Conviction DNA Act specifically and clearly states in numerous places that it applies to "forensic DNA testing" and it does not state that it applies to other types of testing

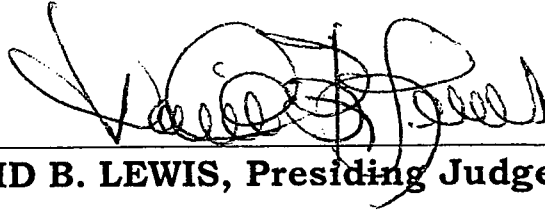
of biological material. 22 O.S.Supp.2013, §§ 1373 – 1373.7. Petitioner also doesn't explain why his writ of assistance could not have been filed and the information obtained prior to the filing of his previous application for post-conviction relief. *Ellis v. State*, No. PC-1997-626 (Okl.Cr. August 5, 1997); see 63 O.S.Supp.1996, § 939 (effective July 1, 1996, the Chief Medical officer shall produce records, documents, evidence or other material of any nature upon the order of a court of competent jurisdiction).

Therefore, the order of the District Court of Woodward County denying Petitioner's application for relief under the Post-Conviction DNA Act, and/or his subsequent application for post-conviction relief in Case No. CRF-1985-59 should be, and is hereby, **AFFIRMED**. Petitioner's motion for evidentiary hearing and motion for discovery are **DENIED**. 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.

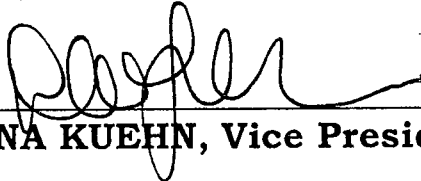
WITNESS OUR HANDS AND THE SEAL OF THIS COURT

this 21st day of August, 2019.



Signature of David B. Lewis

DAVID B. LEWIS, Presiding Judge



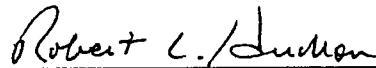
Signature of Dana Kuehn

DANA KUEHN, Vice Presiding Judge



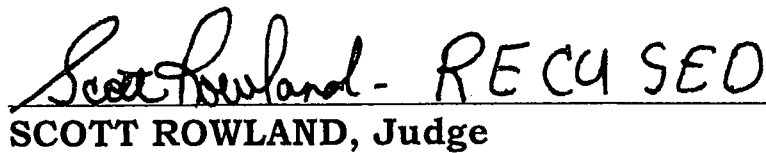
Signature of Gary L. Lumpkin

GARY L. LUMPKIN, Judge



Signature of Robert L. Hudson

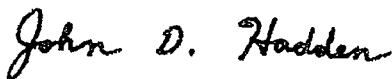
ROBERT L. HUDSON, Judge



Signature of Scott Rowland - RECU SED

SCOTT ROWLAND, Judge

ATTEST:

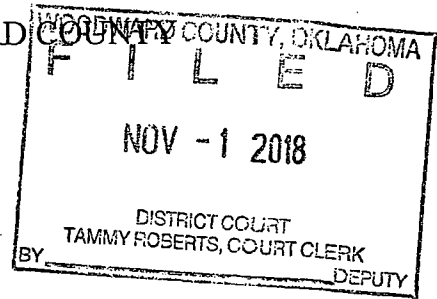


Signature of John D. Hadden

Clerk

PA/F

IN THE DISTRICT COURT OF WOODWARD COUNTY
STATE OF OKLAHOMA



MARSHALL HENRY ELLIS,

Petitioner,

vs.

THE STATE OF OKLAHOMA,

Respondent.

Case No. CRF-85-59

**ORDER DENYING PETITIONER'S
APPLICATION FOR RELIEF UNDER THE POST-CONVICTION DNA ACT,
AND/OR ALTERNATIVELY
SECOND AND SUBSEQUENT POST-CONVICTION, AND/OR
ALTERNATIVELY ENFORCEMENT OF
THE OKLAHOMA OPEN RECORDS ACT, AND/OR
ALTERNATIVELY ENFORCEMENT OF THE COURT'S ORIGINAL ORDER
SUSTAINING DEFENDANT ELLIS' AND DEFENDANT BOSTON'S
DISCOVERY MOTIONS AND EXCULPATORY EVIDENCE MOTIONS
OF 11-19-1985 AND FILE-STAMPED 1-10-1986.**

Now on this 25th day of October, 2018, the above and numbered cause comes on before me upon the Petitioner's Applications set forth and all motions/filings, affidavits submitted by Petitioner and Respondent in support of their respective position.

The State's responses included res judicata, waiver, none-applicability and latches among its defenses, requesting summary disposition.

The Court having reviewed all filings by the parties as of this day, including extensive questioning and discussions by the parties and Court, and therefore being fully advised in the premises, finds the Petitioner's Applications should be denied and the

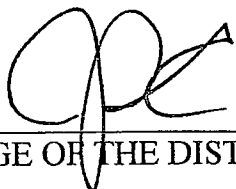
Appendix "B"

Respondent's request for summary disposition be granted, all as set forth in detail in the Status Hearing transcript of October 25, 2018.

The Findings of Fact and Conclusions of Law are fully set out in detail in the court hearing/transcript, which was ordered by Petitioner on October 25, 2018, and is fully adopted by the Court:

1. The Court further finds that it has jurisdiction over this matter.
2. The Court finds that the procedure for any appeal under the Post-conviction DNA Act and/or Second and Subsequent Application is the same as under the Uniform Post-Conviction Act, as set forth in Oklahoma Statutes, 22 O.S. §1084 and 22 O.S. §1087.

WHEREFORE, premises considered, IT IS ORDERED, ADJUDGED AND DECREED that Petitioner's Application for Relief/Enforcement/Evidentiary Hearings are denied and Respondent's request for summary disposition granted as more fully set out in detail in the transcript of October 25, 2018.


JUDGE OF THE DISTRICT COURT

Approved as to form and Content:
Susan H. Meinders
Assistant District Attorney
Woodward County District Attorney's Office
(580) 256-8616

Approved as to Form & Content
Mae G. Lier

I, TAMMY ROBERTS, District Court Clerk In and for Woodward County, Oklahoma, hereby certify the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's office of Woodward County, Oklahoma.
this 1st Nov 2018
TAMMY ROBERTS, District Court Clerk
By [Signature] Deputy

CERTIFICATE OF DELIVERY

This is to certify that on this 1st day of November, 2018, the original of the above and foregoing document was filed of record, and certified copies were hand-delivered to Respondent's attorney Christopher Boring.

CERTIFICATE OF MAILING

This is to certify that on the date the above and foregoing document was filed of record, true and correct certified copies of same were mailed via regular mail with postage paid thereon to:

Clerk of the Appellate Courts
Oklahoma Court of Criminal Appeals
Oklahoma Judicial Center
2100 N Lincoln Blvd., Suite 4
Oklahoma City, OK 73105

Mac Oyler
Attorney for Petitioner
PO Box 272583
Oklahoma City, OK 73137



TAMMY ROBERTS, COURT CLERK

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