Appendix A

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

WILLIAM GEORGE COODEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. PC 2019-0499**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER AFFIRMING DENIAL OF REQUEST FOR POST-CONVICTION DNA TESTING

On July 8, 2019, Petitioner, pro se, appealed to this Court from an order denying his request for post-conviction DNA testing in Oklahoma County District Court Case No. CF-2008-5894. Petitioner was found guilty after a jury trial of Count 1 – Rape in the First Degree and Count 2 – Forcible Oral Sodomy. He was sentenced to fifteen years imprisonment on Count 1 and ten years on Count 2. The sentences were ordered to be served consecutively.

Petitioner now appeals the order denying his motion for DNA testing[1] arguing that DNA testing would show that the victim's testimony is improbable and untruthful. Petitioner claims there was

[1] We note that the issue of ineffective assistance of appellate counsel was raised in the trial court but was not raised in Petitioner's appeal to this Court.

consent between the parties and that the victim lied when she stated that he raped her. He argues that DNA testing could confirm that the victim lied about at least the order of events.

In an order filed June 19, 2019, the Honorable Kendra Coleman, District Judge, denied Petitioner's motion for DNA testing. Judge Coleman found Petitioner does not assert that he did not commit the alleged acts but that DNA testing of the victim's saliva from her rape kit would indicate that the oral contact occurred prior to the vaginal contact and that the victim is lying at least about the order of events. Judge Coleman concluded because Petitioner does not contest that vaginal and oral contact with the victim occurred and is not seeking to demonstrate that he did not commit the acts, he has failed to establish that he is a person eligible to petition for DNA testing under 22 O.S. § 1372.2. Judge Coleman found the items of evidence for which Petitioner seeks DNA testing have previously been subjected to DNA testing that positively identified Petitioner as the DNA contributor. Judge Coleman found Petitioner's request for DNA testing wholly frivolous.

Pursuant to Sec. 1373.4 of Title 22, a court shall order DNA testing only if the court finds:

1. A reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution;

2. The request for DNA testing is made to demonstrate the innocence of the convicted person and is not made to unreasonably delay the execution of the sentence or the administration of justice;

3. One or more of the items of evidence the convicted person seeks to have tested still exists;

4. The evidence to be tested was secured in relation to the challenged conviction and either was not previously subject to DNA testing or, if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results; and

5. The chain of custody of the evidence to be tested is sufficient to establish that the evidence has not been substituted, tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence. For purposes of this act, evidence that has been in the custody of law enforcement, other government officials or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subsection absent specific evidence of material tampering, replacement or alteration.

Petitioner has not shown the District Court abused its discretion. The record reflects DNA testing has been performed on the requested items. Petitioner has not shown that he would not have been convicted if favorable results had been obtained. The order of the District Court denying Petitioner's request for DNA testing is **AFFIRMED.**

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), 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 13th day of March, 2020.

DAVID B. LEWIS, Presiding Judge

DANA KUEHN, Vice Presiding Judge

GARY L. LUMPKIN, Judge

ROBERT L. HUDSON, Judge

SCOTT ROWLAND, Judge

ATTEST:
John D. Hadden
Clerk
PA

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

WILLIAM GEORGE COODEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CF-2008-5894
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER DENYING MOTION FOR DNA TESTING AND

APPLICATION FOR POST CONVICTION RELIEF

This case comes before the Court on the Petitioner William Coodey's Motion For DNA Testing and Application For Post-Conviction Relief. The Court, having reviewed the Petitioner's Motion For DNA Testing and Application For Post-Conviction Relief, filed herein on March 1, 2018, Petitioner's Affidavit In Support Of Application For Post-Conviction Relief And Plan Of Reintegration , filed herein on March 6, 2018, the State's Response to Petitioner's Motion For DNA Testing and Application For Post-Conviction Relief filed herein on April 27, 2018, Petitioner's Reply To State's Response To Petitioner's Combined DNA Testing And Application For Post-Conviction Relief filed herein on May 7, 2018, and the court file and appearance docket for this case, and being fully advised in the premises, finds that:

1. On May 17, 2010, the Petitioner, William Coodey, appeared for jury trial with his attorneys, Bert Richard and Taylor McLawhorn on the following:
    a. Count 1: Rape In The First Degree
    b. Count 2: Forcible Oral Sodomy

2. On May 19, 2010, the Petitioner, William Coodey, was found guilty on both counts and the recommended sentenced was the following:
    a. Count 1: Fifteen (15) years to do in the Department of Corrections.
    b. Count 2: Ten (10) years to do in the Department of Corrections.
    c. Counts 1 and 2 to be served consecutively to each other.
3. Formal sentencing was set on June 1, 2010.
    a. Sentencing was continued to June 11, 2010.
    b. Sentencing was again continued to June 18, 2010.
    c. Formal sentencing took place on June 18, 2010.
4. Judgement and Sentence was filed June 22, 2010.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Post-Conviction DNA Testing Act, Title 22 O.S. §1373 *et seq.*, provides a mechanism by which a petitioner, upon the filing of a proper motion and affidavit, may make application to the Court for DNA testing of the biological material collected in his/her matter. A petitioner is eligible to make such a request if he/she is "a person convicted of a violent felony crime of who has received a sentence of twenty-five (25) years or more and who asserts that he or she did not commit such crime." 22 O.S. §1373.2(A). "The motion requesting forensic DNA testing shall be accompanied by an affidavit sworn to by the convicted person containing statements of fact in support of the motion." §1373.2(C).

Here, Petitioner does not assert that he did not commit the crime, but, instead, that DNA testing of the victim's saliva from her rape kit "would indicate that the oral contact occurred prior to the vaginal contact. Therefore the alleged victim is lying at least about the order of events." See Motion at 3. Because Petitioner does not contest that vaginal and oral contact with

the victim occurred and he is not seeking DNA testing to demonstrate that he did not commit the crimes, he has failed to establish that he is a person eligible to petition for DNA testing under §1373.2.

Additionally, while Petitioner states in his affidavit that the biological material in this case has not been subjected to DNA testing, that assessment is not accurate. The victim's rape kit was submitted and analyzed by the Oklahoma City Police Department Forensic Lab, as is demonstrated by the DNA Examination Report. The DNA from the rape kit matched the known DNA profile for Petitioner at all genetic loci tested. As such, the items of evidence for which Petitioner seeks DNA testing have previously been subjected to DNA testing, testing that positively identified Petitioner as the DNA contributor. The instant request for DNA testing is wholly frivolous and is denied.

The Post-Conviction Procedure Act, Title 22 O.S. §1080, *et seq.*, is neither a substitute for a direct appeal nor a means for a second appeal. *Maines v. State,* 1979 OK CR 71, ¶4, 597 P.2d 774, 775-6; *Fox v. State*, 1994 OK CR 52, ¶2, 880 P.2d 370, 372. The scope of this remedial measure is strictly limited and does not allow for litigation of issues available for review at the time of direct appeal. *Johnson v. State*, 1991 OK CR 124, ¶¶3-4, 823 P.2d 370, 372; *Castro v. State*, 1994 OK CR 53, ¶2, 880 P.2d 387, 388. "Issues that were raised and ruled upon are procedurally barred from further review under the doctrine of res judicata; and issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." *Logan v. State*, 2013 OK CR 2 ¶3, 293 P.3d 969, 973.

An exception to this rule exists where a court finds sufficient reason for not asserting or inadequately presenting an issue in prior proceedings or "when an intervening change in constitutional law impacts the judgment and sentence." *Bryson v. State*, 1995 OK CR 57, ¶2,

903 P.2d 333, 334; 22 O.S. §1086. Sufficient reason for failing to previously raise or adequately assert an issue requires a showing that some impediment external to the defense prevented the petitioner and counsel from properly raising the claim. *Johnson v. State*, 1991 OK CR 124, ¶7, 823 P.2d 370, 373. "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, ¶17 937 P.2d 101, 108.

Here, Petitioner asserts that he received ineffective assistance of appellate counsel where his attorney failed to raise a claim of ineffective assistance of trial counsel, as well as two constitutional challenges to statutes regarding punishment, on direct appeal.

Just as Petitioner's request for DNA testing of items that have already been tested for DNA is frivolous, so, too, is his claim that trial counsel was ineffective for failing to request such testing. Trial counsel was not ineffective for failing to request DNA testing that has already been done.

Petitioner also asserts that the statute under which he was sentenced, 21 O.S. §51.1, is unconstitutional. Petitioner has not followed the rules for challenging the constitutionality of a statute as set forth in Rule 37(D) of the Official Court Rules of the Seventh Judicial District, which provides: "Any party that seeks to challenge the constitutionality of a state statute shall serve the Office of the Attorney General with a copy of the motion and brief challenging the statute and shall certify this service on the original document filed." The rule further directs that "any motion and/or brief filed in violation of this rule shall not be considered by the assigned judge and shall be stricken from the record." Rule 37(E). This issue is not properly before this Court. Additionally, Petitioner waived any constitutional challenge to the habitual offender

statute when he failed to raise his objection in the trial court. Frederick v. State, 1983 OK CR 114.

In his third proposition of error, Petitioner asserts that the provisions of 21 O.S. §§12.1 and 13.1 are unconstitutionally vague because "men of common intelligence would disagree as to its meaning." Every presumption favors constitutionality of an act of the Legislature, and the party attacking the constitutionality of a statute has the burden of proof that it is unconstitutional. *Arganbright v. State*, 2014 OK CR 5. The "void for vagueness" doctrine applies to two (2) kinds of criminal statutes: those that define criminal offenses, and those that fix punishment. *Johnson v. United States*, 135 S.Ct. 2551. The statutes Petitioner challenges neither define the elements of a crime nor fix punishment for a crime. The simply mandate that offenders must serve a minimum portion of an imposed sentence for certain crimes before being eligible for parole or earned credits. The challenged statutes do not fall within either category of criminal law to which the courts have applied the void for vagueness doctrine. Petitioner's constitutional challenge to Sections 12.1 and 13.1 is meritless.

Petitioner's primary claim of error is that appellate counsel was ineffective for omitting the foregoing issues on appeal. The test for determining the effectiveness of appellate counsel is the standard of "reasonably effective assistance" , which requires a petitioner to demonstrate that counsel's performance was so seriously deficient that representation fell below an objective standard of reasonableness and was not within the range of competence demanded of attorneys in criminal cases, and if, but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would be different. *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052. Here, Petitioner fails to meet his burden of demonstrating objectively unreasonable performance or any prejudice suffered as a result of appellate counsel's alleged ineffectiveness.

The claims which Petitioner claims appellate counsel was ineffective for failing to raise on appeal are without merit. The omission of a meritless claim…cannot constitute deficient performance; nor can it have been prejudicial." Logan v. State, OK CR 2. This claim is without merit and is denied.

There is no issue of material fact for which an evidentiary hearing is necessary to resolve. 22 O.S. §1084.

IT IS THEEFOE ORDERED, ADJUDGED, AND DECREED that the Petitioner's Request for DNA Testing and Application for Post-Conviction Relief is DENIED in its entirety.

Dated this the 19 day of June, 2019.

Kendra Coleman
District Judge

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JUN 19 2019

RICK WARREN COURT CLERK
Oklahoma County

NOTICE OF RIGHT TO APPEAL

A final judgment under this act [Post-Conviction Procedure Act, 22 O.S. § 1080, *et seq.*] may be appealed to the Court of Criminal Appeals on petition in error filed either by the applicant or the State within thirty (30) days from entry of the judgment. Upon motion of either party on filing of notice of intent to appeal, within ten (10) days of entering the judgment, the district court may stay the execution of the judgment pending disposition on appeal; provided the Court of Criminal Appeals may direct the vacation of the order staying the execution prior to final disposition of the appeal. 22 O.S. § 1087. The party desiring to appeal from the final order must file a Notice of Post-Conviction Appeal with the Clerk of the District Court within twenty (20) days from the date the order is filed in the District Court. Rule 5.2(C)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (2019).

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2019, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to:

William Coodey, DOC #400513
James Crabtree Correctional Center
216 N. Murray Street
Helena, Oklahoma 73741

PETITIONER, PRO SE

and that a true and correct copy of the above and foregoing order was hand-delivered to:

Jennifer M. Hinsperger, Assistant District Attorney
Oklahoma County District Attorney's Office

COUNSEL FOR RESPONDENT

Deputy Court Clerk

Appendix B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to US Constitution (Appendix B)

Fourteenth Amendment to US Constitution (Appendix B)

Post-Conviction DNA Testing Act, Title 22 O.S. § 1373 et seq. (Appendix B)

Rape First Degree 21 O.S. § 1114 (Appendix B)

Forcible Oral Sodomy 21 O.S. § 888 (Appendix B)

APPENDIX B

WESTLAW

ARTICLE VI. DEBTS VALIDATED--SUPREME LAW OF LAND--OATH OF OFFICE
USCA CONST Art. VI-Full Text United States Code Annotated Constitution of the United States *(Approx. 2 pages)*

United States Code Annotated
Constitution of the United States
Annotated
Article VI. Debts Validated--Supreme Law of Land--Oath of Office

U.S.C.A. Const. Art. VI-Full Text

ARTICLE VI. DEBTS VALIDATED--SUPREME LAW OF LAND--OATH OF OFFICE

Currentness

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S.C.A. Const. Art. VI-Full Text, USCA CONST Art. VI-Full Text
Current through P.L. 116-130. Some statute sections may be more current, see credits for details.

End of Document

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECT
USCA CONST Amend. XIV-Full Text United States Code Annotated Constitution of the United States *(Approx. 2 pages)*

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or

duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated July 28, 1868, declaring that the proposed fourteenth amendment had been ratified by the legislatures of thirty of the thirty-six States. The amendment was ratified by the State Legislatures on the following dates: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee, July 19, 1866; New Jersey, Sept. 11, 1866; Oregon, Sept. 19, 1866; Vermont, Oct. 30, 1866; Ohio, Jan. 11, 1867; New York, Jan. 10, 1867; Kansas, Jan. 11, 1867; Illinois, Jan. 15, 1867; West Virginia, Jan. 16, 1867; Michigan, Jan. 16, 1867; Minnesota, Jan. 16, 1867; Maine, Jan. 19, 1867; Nevada, Jan. 22, 1867; Indiana, Jan. 23, 1867; Missouri, Jan. 25, 1867; Rhode Island, Feb. 7, 1867; Wisconsin, Feb. 7, 1867; Pennsylvania, Feb. 12, 1867; Massachusetts, Mar. 20, 1867; Nebraska, June 15, 1867; Iowa, Mar. 16, 1868; Arkansas, Apr. 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868; Louisiana, July 9, 1868; South Carolina, July 9, 1868; Alabama, July 13, 1868; Georgia, July 21, 1868. Subsequent to the proclamation the following States ratified this amendment: Virginia, Oct. 8, 1869; Mississippi, Jan. 17, 1870; Texas, Feb. 18, 1870; Delaware, Feb. 12, 1901; Maryland, Apr. 4, 1959; California, May 6, 1959; and Kentucky, Mar. 18, 1976.

The Fourteenth Amendment originally was rejected by Delaware, Georgia, Louisiana, North Carolina, South Carolina, Texas and Virginia. However, the State Legislatures of the aforesaid States subsequently ratified the amendment on the dates set forth in the preceding paragraph. Kentucky and Maryland rejected this amendment on Jan. 10, 1867 and Mar. 23, 1867, respectively.

The States of New Jersey, Ohio and Oregon "withdrew" their consent to the ratification of this amendment on Mar. 24, 1868, Jan. 15, 1868, and Oct. 16, 1868, respectively.

The State of New Jersey expressed support for this amendment on Nov. 12, 1980.

Ohio and Oregon reratified the amendment on March 12, 2003, and April 25, 1973, respectively.

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 116-130. Some statute sections may be more current, see credits for details.

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WESTLAW

§ 1373. Short title--Postconviction DNA Act
OK ST T. 22 § 1373 Oklahoma Statutes Annotated | Title 22. Criminal Procedure *(Approx. 2 pages)*

Oklahoma Statutes Annotated
Title 22. Criminal Procedure (Refs & Annos)
Chapter 25. Miscellaneous Provisions
DNA Forensic Testing Act

22 Okl.St.Ann. § **1373**

§ **1373**. Short title--Postconviction DNA Act

Currentness

This act shall be known and may be cited as the "Postconviction DNA Act".

Credits

Laws 2013, c. 317, § 1, eff. Nov. 1, 2013.

Notes of Decisions containing your search terms (0) View all 2

22 Okl. St. Ann. § **1373**, OK ST T. 22 § **1373**
Current with emergency effective provisions through Chapter 4 of the Second Regular Session of the 57th Legislature (2020)

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WESTLAW

§ 1114. Rape in first degree--Second degree
OK ST T. 21 § 1114 Oklahoma Statutes Annotated Title 21. Crimes and Punishments *(Approx. 2 pages)*

Oklahoma Statutes Annotated
Title 21. Crimes and Punishments
Part IV. Crimes Against Public Decency and Morality
Chapter 45. Rape, Abduction, Carnal Abuse of Children and Seduction

21 Okl.St.Ann. § **1114**

§ **1114**. Rape in first degree--Second degree

Currentness

A. Rape or rape by instrumentation in the first degree shall include:

1. Rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age;

2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;

3. Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

4. Rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

5. Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or

6. Rape by instrumentation regardless of the age of the victim or the age of the person committing the crime.

B. In all other cases, rape is rape in the second degree.

Credits

R.L.1910, § 2417; Laws 1981, c. 325, § 5; Laws 1983, c. 41, § 2, eff. Nov. 1, 1983; Laws 1986, c. 179, § 3, eff. Nov. 1, 1986; Laws 1990, c. 224, § 3, eff. Sept. 1, 1990; Laws 2008, c. 438, § 3, eff. July 1, 2008; Laws 2017, c. 164, § 1, eff. Nov. 1, 2017.

Editors' Notes

HISTORICAL AND STATUTORY NOTES

The 1981 amendment made the language of this section neutral as to gender, whereas previously it had applied only to rapes committed by males against females. The amendment also added the provision and references relating to rape by instrumentation.
The 1983 amendment substantially rewrote this section, which prior thereto read:
"A. Rape in the first degree shall be the following acts:
"1. Rape committed by a person over eighteen (18) years of age upon a person under the age of fourteen (14) years; or
"2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent; or
"3. Rape accomplished with any person by means of force overcoming his or her resistance, or by means of threats of immediate and great bodily harm, accompanied by apparent power of execution, preventing such resistance; or
"4. Rape by instrumentation resulting in bodily harm, accompanied by apparent power of execution, preventing resistance, which is rape by instrumentation in the first degree.
"B. In all other cases, rape or rape by instrumentation is rape in the second degree."
The 1983 amendment, in subsection A, in the introductory clause, substituted "include" for "be the following acts"; in paragraph 1 substituted "fourteen (14) years of age" for "the age of fourteen (14) years"; rewrote paragraph 3, which prior thereto read:
"Rape accomplished with any person by means of force overcoming his or her resistance, or by means of threats of immediate and great bodily harm, accompanied by apparent power of execution, preventing such resistance; or"
; and in paragraph 4 following "harm" deleted ", accompanied by apparent power of execution, preventing resistance, which".
The 1986 amendment inserted "regardless of the age of the person committing the crime" throughout the section.
The 1990 amendment, in subsection A, added "or" in paragraph 4 and added paragraph 5.
Laws 2008, c. 438, § 3, in subsection A, inserted paragraphs 3 and 4, redesignated former paragraphs 3 through 5 as paragraphs 5 through 7.
Laws 2017, c. 164, § 1, in subsection A, added "or rape by instrumentation" after "Rape"; in subsection A, paragraph 6, deleted "resulting in bodily harm is rape by instrumentation in the first degree" and added "victim or the age of the" before "person"; deleted subsection A, paragraph 7; and, in subsection B, deleted "or rape by instrumentation".

Source:

Comp.Laws Dak.1887, §§ 6524, 6525.
St.1890, §§ 2173, 2174.
St.1893, §§ 2163, 2164.
St.1903, §§ 2254, 2255.
Comp.Laws 1909, §§ 2356, 2357.

Comp.St.1921, § 1837.
St.1931, § 2518.

Notes of Decisions containing your search terms (0) View all 233

21 Okl. St. Ann. § **1114**, OK ST T. 21 § **1114**
Current with emergency effective provisions through Chapter 4 of the Second Regular Session of the 57th Legislature (2020)

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WESTLAW

§ 888. Forcible sodomy

OK ST T. 21 § 888 Oklahoma Statutes Annotated Title 21. Crimes and Punishments Effective: November 1, 2018 (Apr

Oklahoma Statutes Annotated
Title 21. Crimes and Punishments
Part IV. Crimes Against Public Decency and Morality
Chapter 34. Bigamy, Incest and **Sodomy** (Refs & Annos)

Proposed Legislation

Effective: November 1, 2018

21 Okl.St.Ann. § 888

§ 888. **Forcible sodomy**

Currentness

<Text as amended by Laws 2018, c. 167, § 2, Laws 2017, c. 128, § 1, and Laws 2016, c. 349, § 5. See also text as amended by Laws 2002, c. 455, § 4.>

A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or

any combination of the offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. The crime of **forcible sodomy** shall include:

1. **Sodomy** committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age;

2. **Sodomy** committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;

3. **Sodomy** accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime;

4. **Sodomy** committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;

5. **Sodomy** committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system;

6. **Sodomy** committed upon a person who is at the time unconscious of the nature of the act, and this fact should be known to the accused;

7. **Sodomy** committed upon a person where the person is intoxicated by a narcotic or anesthetic agent administered by or with the privity of the accused as a means of forcing the person to submit; or

8. **Sodomy** committed upon a person who is at least sixteen (16) years of age but less than eighteen (18) years of age by a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, or

h. an owner, operator or employee of a child care facility, as defined by Section 402 of Title 10 of the Oklahoma Statutes.

Credits

Laws 1981, c. 57, § 1; Laws 1982, c. 11, § 1, operative Oct. 1, 1982; Laws 1990, c. 224, § 1, eff. Sept. 1, 1990; Laws 1992, c. 289, § 2, emerg. eff. May 25, 1992; Laws 1997, c. 133, § 264, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 168, eff. July 1, 1999; Laws 2000, c. 175, § 1, eff. Nov. 1, 2000; Laws 2002, c. 460, § 9, eff. Nov. 1, 2002; Laws 2006, c. 62, § 4, emerg. eff. April 17, 2006; Laws 2007, c. 261, § 9, eff. Nov. 1, 2007; Laws 2009, c. 234, § 123, emerg. eff. May 21, 2009; Laws 2016, c. 349, § 5, emerg. eff. June 6, 2016; Laws 2017, c. 128, § 1, eff. July 1, 2017; Laws 2018, c. 167, § 2, eff. Nov. 1, 2018.

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Section 2 of Laws 1981, c. 57 directs codification.

The 1982 amendment substituted "this title, upon conviction" for "Title 21 of the Oklahoma Statutes, if convicted" and "twenty (20)" for "ten (10)" in the first sentence.

The 1990 amendment rewrote the section, which prior thereto read:

"Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the penitentiary for a period of not more than twenty (20) years. This crime may also be known as **forcible sodomy**."

The 1992 amendment added the second and third sentences in subsection A.

The 1997 amendment, in subsection A, in the first sentence, deleted from the end "punishable by imprisonment in the penitentiary for a period of not more than twenty (20) years", and in the third sentence deleted from the end ", in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court".

The 1999 amendment restored the language deleted by the 1997 amendment.

The 2000 amendment added "; or" in subsection B.3; and added subsection B.4.

Laws 2002, c. 455, § 4, in subsection A, in the first sentence added the exception, and deleted the third sentence, which read: "Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State

Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court."
Laws 2002, c. 460, § 9, without reference to the amendment by Laws 2002, c. 455, § 4, in subsection A, added the fourth sentence.
Laws 2006, c. 62, § 4, in subsection B, added paragraph 5, and made a nonsubstantive change.
Laws 2007, c. 261, § 9, in subsection A, substituted "custody of the Department of Corrections" for "State Penitentiary" in three places and inserted the second and third sentences.
Laws 2009 c. 234, § 123, in subsection A, substituted "843.5 of this title" for "7115 of Title 10 of the Oklahoma Statutes".
Laws 2016, c. 349, § 5, in subsection B, deleted "or" at the end of paragraphs 1 through 4, and added paragraphs 6 and 7.
Section 1 of Laws 2016, c. 349, provides:
"This act shall be known and may be cited as the 'Justice for J.W. Act of 2016'".
Laws 2017, c. 128, § 1, in subsection A, in the last sentence, substituted "combination of the offenses" for "combination of said offenses"; and, in subsection B, paragraph 4, inserted "or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state".
Laws 2018, c. 167, § 2, added subsection B, paragraph 8.

CROSS REFERENCES

Persons convicted of incest or **sodomy** not to be hired for certain employment in nursing homes and facilities, see Title 63, § 1-1950.1.

LAW REVIEW AND JOURNAL COMMENTARIES

Is it rape, **sodomy**, or what? Robert E.L. Richardson, 62 Okla.B.J. 1597 (1991).

Relevant Notes of Decisions (33) View all 37

Notes of Decisions listed below contain your search terms.

Validity

Specific enhancement provision of **forcible sodomy** statute providing options of life or life without parole upon a third conviction for **forcible sodomy** of a child under 16 was not unconstitutionally vague, and trial court's choice to instruct jury on general enhancement provision did not demonstrate vagueness of enhancement statutes, particularly where instruction inured to defendant's benefit. Applegate v. State, Okla.Crim.App., 904 P.2d 130 (1995). Sentencing And Punishment ⚿ 1210; Sentencing And Punishment ⚿ 1388

Sections 886 and 888 of this title prohibiting **sodomy** are not unconstitutionally vague and indefinite. Plotner v. State, Okla.Crim.App., 762 P.2d 936 (1988). Constitutional Law 1132(50); Sex Offenses 5(2)

Construction and application

Under Oklahoma law, **forcible sodomy** includes **oral** copulation as well as anal copulation. Casey v. State, Okla.Crim.App., 732 P.2d 885 (1987). Sex Offenses 21(1)

Evidence

Evidence was sufficient to convict defendant, a police officer, of **forcible oral sodomy** of victim, whom he initially detained in traffic stop; victim testified that defendant stopped her, drove to her home, followed her into her bedroom, told her that having sex with him was better than going to jail, and put his penis in her mouth. Holtzclaw v. State, Okla.Crim.App., 448 P.3d 1134 (2019). Sex Offenses 254

Finding rape and **sodomy**, with penetration as essential element of offenses, was not supported by sole evidence of defendant's statements that he saw companion have sex with victim from distance in poor lighting; evidence did not confirm intimate details of crime, in absence of evidence of trauma to victim's genital areas or semen or sperm on body. Cannon v. State, Okla.Crim.App., 904 P.2d 89 (1995), rehearing denied, certiorari denied 116 S.Ct. 1272, 516 U.S. 1176, 134 L.Ed.2d 219, post-conviction relief denied 933 P.2d 926, denial of habeas corpus affirmed 259 F.3d 1253, certiorari denied 122 S.Ct. 1966, 535 U.S. 1080, 152 L.Ed.2d 1026. Sex Offenses 259

Evidence supported defendant's conviction for **forcible oral sodomy**; testimony from child's grandmother, mother and doctor mirrored child's trial testimony, both grandmother and mother testified that child's attitude toward defendant changed from one of affection to one of fear about time that alleged act took place, child no longer wanted to visit defendant's household and became nearly hysterical if forced to do so, records custodian from defendant's place of work testified that defendant was off work during time that alleged act took place, and defendant and his wife admitted that something had happened to child, but simply denied defendant was the culprit. Bartell v. State, Okla.Crim.App., 881 P.2d 92 (1994), rehearing denied. Infants 1750; Sex Offenses 258

After defendant charged with **sodomizing** seven-year-old child testified on direct examination that previous incident involving neighborhood children had been innocent, State could present rebuttal witnesses to testify concerning circumstances surrounding defendant's encounter with neighborhood children. Kimbro v. State, Okla.Crim.App., 857 P.2d 798 (1990). Criminal Law 683(1)

Evidence was sufficient to support conviction for **forcible sodomy**, notwithstanding victim's delay in reporting the assault, statements that injuries were sustained during fall, and alleged large monetary demands to settle matter without prosecution. Plotner v. State,

Okla.Crim.App., 762 P.2d 936 (1988). Sex Offenses ⚖ 254; Sex Offenses ⚖ 279; Sex Offenses ⚖ 312

Although victim's testimony was inconsistent, conviction of **sodomy** was sufficiently supported by testimony of prison laundry supervisor stating that victim had indicated to him that he had been target of prior sexual advances, that he could tell there was a conflict between victim and defendants by observing them at work, that victim did not go to work the day of the attack, and that defendant admitted that he was in C block, the location of victim's cell, the morning of the attack. Hall v. State, Okla.Crim.App., 762 P.2d 264 (1988). Sex Offenses ⚖ 254

Element of penetration necessary to support conviction for anal **sodomy** was supported by victim's testimony that during act, defendant told victim to move it back and forth and it came out, and then told victim "you put it in there and stay still and I'll do it." Salyer v. State, Okla.Crim.App., 761 P.2d 890 (1988). Sex Offenses ⚖ 259

Evidence was sufficient to support convictions of first-degree rape and **forcible sodomy**; victim testified that sexual acts performed with defendant were not consensual, and samples taken from victim matched defendant's blood type. Casey v. State, Okla.Crim.App., 732 P.2d 885 (1987). Sex Offenses ⚖ 254; Sex Offenses ⚖ 261; Sex Offenses ⚖ 272

Double jeopardy

Two **oral sodomies** committed in bedroom were not part of same continuing **oral sodomy** which began in living room, as would invoke principle of double jeopardy, since significant lapse of time occurred between the two incidents, a significant distance was involved in taking the boy from living room to bedroom, defendant and boy took time to undress before **oral sodomy** occurred in bedroom, and each element was proven separately for offenses occurring in the two rooms. Salyer v. State, Okla.Crim.App., 761 P.2d 890 (1988). Double Jeopardy ⚖ 148

Double jeopardy prevented two convictions for **oral sodomy** where defendant began **oral sodomy** on boy, stopped to lock front door, and resumed act of **oral sodomy**; no significant passage of time occurred while defendant interrupted the act to lock the door, and no significant distance separated the two acts sufficient to call the two incidents uninterrupted or intermittent. Salyer v. State, Okla.Crim.App., 761 P.2d 890 (1988). Double Jeopardy ⚖ 148

Consent

Child under age of 16 cannot consent to **oral** or anal **sodomy**; overruling *Slaughterback v. State*, 594 P.2d 780. Kimbro v. State, Okla.Crim.App., 857 P.2d 798 (1990). Infants ⚖ 1598; Sex Offenses ⚖ 115

Use of force

at some time within five-month period. Kimbro v. State, Okla.Crim.App., 857 P.2d 798 (1990). Constitutional Law 4581; Infants 1658; Sex Offenses 148

Information which charged defendant with **forcible sodomy** and which alleged unnatural carnal copulation by mouth with victim, contained elements of offense and apprised defendant of what he had to be prepared to meet at trial. Plotner v. State, Okla.Crim.App., 762 P.2d 936 (1988). Sex Offenses 146

Lesser included offenses

Nonforcible **sodomy** could not constitutionally be used as lesser included offense of **forcible oral** and anal **sodomy**, where charge related to conduct between heterosexual adults and defense was consent by alleged victim. Garcia v. State, Okla.Crim.App., 904 P.2d 144 (1995). Indictments And Charging Instruments 834

Verdict

Jury verdict finding defendant guilty of **forcible oral sodomy** was not subject to reversal as allegedly being inconsistent with jury verdict acquitting defendant of first-degree rape; substantial evidence supported jury's verdict on the **forcible oral sodomy** charge, and each verdict stood on its own. Holtzclaw v. State, Okla.Crim.App., 448 P.3d 1134 (2019). Criminal Law 1159.2(5)

Sentence and punishment

Oklahoma **forcible sodomy** is not a violent felony under the Armed Career Criminal Act's (ACCA) elements clause. United States v. Degeare, C.A.10 (Okla.)2018, 884 F.3d 1241. Sentencing And Punishment 1284

Sentence of 263 years' imprisonment was not excessive in prosecution for sexual battery, procuring lewd exhibition, **forcible oral sodomy**, first-degree rape, and second-degree rape; although defendant argued that he was a young, productive man who was dedicated to serving people as police officer and that he had been law-abiding up until his arrest, he admitted that each of his 18 sentences was within range of punishment, and defense counsel did not ask for concurrent sentences, evidence was sufficient to support convictions, and while defendant alleged that joinder of cases allowed sentences to be unfairly stacked, each sentence imposed on defendant represented consequence of separate crime, involving separate victims. Holtzclaw v. State, Okla.Crim.App., 448 P.3d 1134 (2019). Criminal Law 1888

Thirteen-year sentence for **forcible oral sodomy** upon three-year-old girl was not excessive, given that maximum punishment allowed by law was 20 years and there was nothing shocking about sentence. Bartell v. State, Okla.Crim.App., 881 P.2d 92 (1994), rehearing denied. Infants 1674; Sex Offenses 436

Sentences of 150 years imprisonment for each count of **forcible oral sodomy** and lewd or indecent acts with child under age of 16 were not excessive given nature of offenses and defendant's two prior convictions, one of which was for child molestation. Virgin v. State, Okla.Crim.App., 792 P.2d 1186 (1990). Infants 1673; Sex Offenses 434

Defendant's sentences for five years for each of two indecent exposure counts, ten years for each of four counts of lewd acts with child under 16, 15 years for each of six counts of **forcible oral sodomy**, and 50 years for each of two rape counts, all sentences to be served consecutively, were not excessive, as offenses were committed over period of approximately 14 months with four separate victims including defendant's own daughter, and none of victimized children were over age of nine years. Beihl v. State, Okla.Crim.App., 762 P.2d 976 (1988). Infants 1673; Obscenity 252; Sentencing And Punishment 611; Sentencing And Punishment 645; Sex Offenses 434; Sex Offenses 436

Defendant's sentence of 50 years imprisonment for first-degree rape and 20 years imprisonment for **forcible sodomy** was not excessive. Johnson v. State, Okla.Crim.App., 760 P.2d 838 (1988). Sex Offenses 434; Sex Offenses 435

Consecutive sentences of 15 years, 15 years, 15 years and 10 years for second-degree rape, **forcible sodomy**, second-degree rape by instrumentation and first-degree burglary, respectively, were not excessive. Miller v. State, Okla.Crim.App., 751 P.2d 733 (1988). Burglary 49; Sex Offenses 434; Sex Offenses 435

Fifty-year sentence for rape and 20-year sentence for **forcible sodomy** were within statutory limits, and hence, were not excessive. Waxler v. State, Okla.Crim.App., 747 P.2d 964 (1987). Sex Offenses 433; Sex Offenses 434

Sentences of 55 years for conviction of robbery with dangerous weapon, 99 years for conviction of rape in first degree, ten years for conviction of attempted **sodomy**, and 99 years for conviction of **sodomy** were not excessive. Renfro v. State, Okla.Crim.App., 734 P.2d 286 (1987). Robbery 30; Sex Offenses 435; Sex Offenses 437

Imposition of sentence of 20 years imprisonment on defendant convicted of **forcible sodomy** was not so excessive so as to justify modification of the sentence, where penalty was well within range of punishment allowed by the appropriate statute, 21 O.S.1981, § 888, which provides punishment for **forcible sodomy**. Fincher v. State, Okla.Crim.App., 711 P.2d 940 (1985). Sex Offenses 434

21 Okl. St. Ann. § 888, OK ST T. 21 § 888
Current with emergency effective provisions through Chapter 4 of the Second Regular Session of the 57th Legislature (2020)

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