

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

THE CLERK SHALL ENTER THE FOLLOWING ORDERS OF THE COURT:

1 **MA-2019-634**
Tulsa County
Case No. CF-2001-5568
Honorable Cliff Smith
Associate District Judge

**DAVID NEWTON v. TULSA
COUNTY DISTRICT COURT**
FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN - 3 2020

ORDER DISMISSING REQUEST AS MOOT **JOHN D. HADDEN**
CLERK

On November 12, 2019, the District Court fully adjudicated Petitioner's complaints regarding the pending matters in this case. Petitioner's request for a Writ of Mandamus is therefore **MOOT** and is **DISMISSED**.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

2 **MA-2019-802**
Comanche County
Case No. CF-1998-470
Honorable Emmit Tayloe
District Judge

**THOMAS EARL GREER v. THE
STATE OF OKLAHOMA**

ORDER DISMISSING REQUEST AS MOOT

On December 12, 2019, the District Court fully adjudicated Petitioner's complaints regarding the pending matters in this case. Petitioner's request for a Writ of Mandamus is therefore **MOOT** and is **DISMISSED**.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

3 **MA 2019-841**
Oklahoma County
Case No. CF-2003-3169
Honorable Richard Kirby
Associate District Judge

**LAWRENCE MAYES v.
OKLAHOMA COUNTY DISTRICT
COURT, DISTRICT COURT
JUDGE COLEMAN**

Appendix B 1/3

ORDER DISMISSING REQUEST AS MOOT

On December 6, 2019, the District Court fully adjudicated Petitioner's complaints regarding the pending matters in this case. Petitioner's request for a Writ of Mandamus is therefore **MOOT** and is **DISMISSED**.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

4 **MA-2019-697**
Oklahoma County
Case No. CF-2010-2268
Honorable Richard Kirby
Associate District Judge

**JEREMY TODD BENCH v. THE
STATE OF OKLAHOMA**

ORDER DISMISSING REQUEST AS MOOT

On December 9, 2019, the District Court fully adjudicated Petitioner's complaints regarding the pending matters in this case. Petitioner's request for a Writ of Mandamus is therefore **MOOT** and is **DISMISSED**.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

5 **F-2018-729**
Adair County
Case Nos. CF-2016-297
and CF-2017-4
Honorable L. Elizabeth
Brown
Associate District Judge

**BRIAN SANDERS v. THE STATE OF
OKLAHOMA**

ORDER DISMISSING APPEAL

Appellant requests that this appeal be dismissed and submits a properly executed affidavit as required by Rule 3.12(B)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). Appellant requests that the prosecution of the appeal cease, and acknowledges that once dismissed, the appeal cannot be reinstated. Appellant's appeal is **DISMISSED**. Pursuant to

Rule 3.15, *Id.*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

Signed for on 1-8-2020

6 PC-2019-925

Tulsa County

Case No. CF-2010-1707

Honorable Dawn Moody

District Judge

ROBERT R. YERTON, JR. v.

THE STATE OF OKLAHOMA

filed 12-16-19, response mailed on 1-27-2020
address updated on 2-3-2020
wrote again on 3/2/2020

ORDER DECLINING JURISDICTION

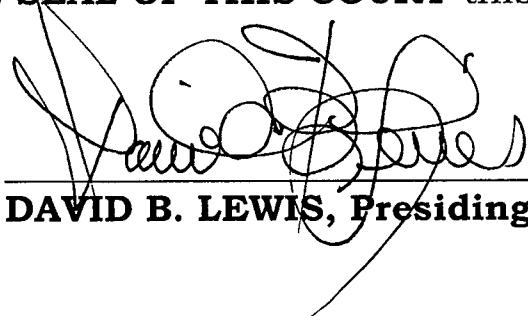
This Court will only entertain applications for post-conviction relief if Petitioner has sought and been denied relief in the District Court. Rule 5.1 and 5.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). Petitioner is required to file with this Court, among other things, a certified copy of the District Court order denying the request for relief. See Rule 5.2(C)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). Petitioner's pleading requesting post-conviction relief does not contain a copy of a trial court order or records sufficient to prove he was denied relief in the District Court. The Court **DECLINES** jurisdiction and **DISMISSES** this matter.

CONCUR: Lewis, P.J.; Kuehn, V.P.J.; Lumpkin, J.; Hudson, J.; Rowland, J.

IT IS SO ORDERED.

WITNESS MY HAND AND THE SEAL OF THIS COURT this 3rd

day of January, 2020.


DAVID B. LEWIS, Presiding Judge

ATTEST:

John D. Hadden

Clerk

**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA**

ROBERT ROLAND YERTON, JR.,)
Petitioner,)
v.)
STATE OF OKLAHOMA,)
Respondent.)
Case No. CF-2010-1707
Judge Dawn Moody
DIS

**DISTRICT COURT
FILED**

OCT 09 2019

**ORDER DISMISSING PETITIONER'S
THIRD APPLICATION FOR POST-CONVICTION RELIEF**

Petitioner's Third Application for Post-Conviction Relief comes before this Court for consideration under the Post-Conviction Procedure Act, 22 O.S. §§ 1080-1089. This Court has reviewed Petitioner's Third Application, the State's Response, and the record in rendering its decision. This Court finds that the Application fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74. Also, this Court finds it unnecessary to appoint counsel for Petitioner. See 22 O.S. § 1082.

STATEMENT OF THE FACTS

The State of Oklahoma filed a felony information (“Information”) on May 5, 2010 against Robert Roland Yerton Jr. (“Petitioner”). The Second Amended Information, filed on May 17, 2010, charged Petitioner with: (Count One) Lewd Molestation; (Count Two) Child Sexual Abuse; (Count Three) Child Sexual Abuse; (Count Four) Lewd Molestation; and (Count Five) Lewd Molestation. The State’s case was bogged down by pretrial motions for years, until the Honorable Judge William C. Kellough called the case for jury trial on August 20, 2012. The jury found Petitioner not guilty of Count One; guilty of Count Two, recommending twelve years

imprisonment; guilty of Count Three, recommending twelve years imprisonment; guilty of Count Four, recommending three years; and not guilty of Count Five.

Judge Kellough called the case for formal sentencing petitioner in accordance with the jury's recommendation, ordering the last four years of Petitioner's twelve-year term in Count Three to be suspended. He also ordered that all counts run consecutively. The OCCA affirmed. *Yerton v. State*, F-2012-918 (Okl.Cr., February 14, 2014)(not for publication).

Since then, Petitioner has sought relief on multiple occasions. He filed a Motion for Suspended Sentence on February 26, 2014, which Judge Kellough denied the same day. He then filed an application for post-conviction relief ("First Application") on April 10, 2014. The District Court denied the First Application, and the OCCA affirmed. *Yerton v. State*, PC-2014-1054 (Okl.Cr., February 27, 2015)(not for publication). Petitioner filed another application for post-conviction relief ("Second Application"), which the District Court subsequently denied on September 10, 2015. Petitioner did not appeal. Now, Petitioner submits his Third Application for Post-Conviction Relief on July 30, 2019.

ARGUMENT AND AUTHORITY

Petitioner's Third Application fails to surmount the procedural bar imposed by 22 O.S. § 1086, with the exception of his first proposition, and this Court dismisses it. His first proposition fails to present a *prima facie* 22 O.S. § 1080(d) claim. Oklahoma's Post-Conviction Procedure Act, 22 O.S. §§ 1080 – 1089, provides that the District Court may dismiss an application when satisfied "on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings." 22 O.S. § 1083(B). Accordingly, dismissal on the pleadings and the record is improper where there exists a material issue of fact for this Court to consider. *Id.*

The Third Application is fit for dismissal. Petitioner fails to overcome the procedural bar imposed by 22 O.S. § 1086. Petitioner's sprawling argument covers a number of arguments, none of which present a material issue of fact or claim upon which relief can be granted. Petitioner claims:

1. "By denying the Petitioner Post Conviction Relief this Honorable Court would be allowing the State (Tulsa County) to continue to endorse Tulsa Police Department Dianna Baumann's withholding of exculpatory evidence, as she deems fit and

necessary, because it will not support her arrest, nor Tulsa County's Conviction." Third Application at 16.

2. "At trial, in front of a jury full of Bible-belt straight-laced peers, ADA McCamis made several direct inferences to her personal perception of the Petitioner's sexual orientation in an effort to cast him in as bad a light as possible to the jury." Third Application at 21.
3. "The Petitioner claims that a fundamental miscarriage of justice has occurred in his case that has resulted in his unjust, wrongful, and illegal incarceration due to the steadfast and perjurious statements of his son, Bella Mendoza, as well as the TPD lead detective, Dianna Baumann, and ADA Sara McCamis." Third Application at 29.
4. "Petitioner has not exhausted his Federal Due Process portions of Grounds One, Two, and Three of his Direct Appeal." Third Application at 31.
5. "By denying Post Conviction Relief this Honorable Court would be allowing the State (Tulsa County) to continue to endorse Tulsa County's ranking near the top of the United State's percentage of wrongful convictions." Third Application at 34.

Petitioner also asserts in his conclusion "newly discovered Brady violations caused by Tulsa Police Department Detective Dianna Baumann, steadfast and persistent perjurious statements, prejudice, unfairness, miscarriage of justice, cause and prejudice, and Constitutional violations. Third Application at 37. Review of the Third Application and the record indicates that none of these arguments present a material fact to support a sufficient reason excepting Petitioner from submitting new claims for relief. 22 O.S. § 1086. Accordingly, Petitioner's Third Application must be dismissed.

I. Petitioner fails to present a *prima facie* 22 O.S. §1080(d) case

Petitioner fails to present a material issue of fact for this Court to consider, by failing to present a *prima facie* 22 O.S. § 1080(d) claim. Oklahoma's Post-Conviction Procedure Act provides for claims asserting "evidence of material facts, not previously presented and heard, that requires vacature of the conviction or sentence in the interest of justice." 22 O.S. § 1080(d). The evidence must therefore be material, not previously presented and heard, and be of such significance that it would compel this Court to vacate his judgment and sentence in the interest of justice. Further, the OCCA has held that this evidence must have been undiscoverable for trial with the exercise of due diligence. *Ramano v. State*, 1996 OK CR 10, ¶ 12, 917 P.2d 12. Petitioner fails to meet this standard.

The first proposition fails to demonstrate materiality, nor does it provide any basis for vacating his judgment and sentence in the interest of justice. Petitioner's first proposition largely assails the investigation conducted by Tulsa Police Detective Dianna Baumann, relying entirely on transcripts. Third Application 16 - 20. Petitioner appears to argue that "7 years later, that this [the alleged misconduct] was a pattern of behavior by Detective Baumann as evidenced in the trial and acquittal of William Bridges in Tulsa County case number CF-2018-5720."¹ Third Application at 19. He asserts that this amounts to a violation of the rule articulated by the United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). Petitioner fails to identify any relationship, or even relevance, between Tulsa County Case No. CF-2018-5720 and his own. *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294 (holding that the burden lies upon the petitioner to sustain the allegations of his petition, that every presumption favors the regularity of proceedings, and that error is never assumed, but must affirmatively appear).

Evidence of misconduct in unrelated settings cannot be imputed to the prosecution under *Brady* unless a Petitioners shows that misconduct was occurring at the same time period, and was of the same nature of the defendant's crimes. *Wright v. State*, 2001 OK CR 19, ¶¶ 38 – 40, 30 P.3d 1148, 1157. Petitioner cannot show that alleged misconduct which occurred in the same time period, since the alleged conduct took place nearly a decade after. Moreover, Petitioner's case involved his crimes of Child Sexual Abuse and Lewd Molestation; CF-2018-5720 involved a single charge of First Degree Murder. He therefore fails to demonstrate the materiality of this information, much less the need for this Court to vacate his judgement and sentence in the interest of justice. Prosecutors cannot be expected to produce pretrial *Brady* materials for things which have yet to happen or exist, in radically different types of cases. *Withhold info. in her masterfile*

II. Title 22, Section 1086 forecloses relief

Oklahoma's Post-Conviction Procedure Act "provides petitioners with very limited grounds upon which to base a collateral attack on their judgments." *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. The doctrine of *res judicata* procedurally bars issues which were already raised and ruled upon; the doctrine of waiver bars issues which could have been raised on review, but

¹ Petitioner fails to actually identify any finding of misconduct on the part of Detective Baumann in Tulsa County Case No. CF-2018-5720.

b/l of no discovery

C 4/9

were not. *Id.* See also 22 O.S. § 1086; *King v. State*, 2001 OK CR 22, ¶ 4, 29 P.3d 1089, 1090; *Webb v. State*, 1992 OK CR 38, ¶ 6, 835 P.2d 115, 116, *overruled on other grounds*, *Neill v. State*, 1997 OK CR 41, ¶ 7 n. 2, 943 P.2d 145, 148 n. 2.

The text of § 1086 is even more direct in its prohibition against subsequent post-conviction applications. Section 1086 states that “[a]ll grounds for relief available to the application under this act must be raised in the original, supplemental or amended application.” 22 O.S. § 1086. The section establishes procedural bars for matters subject to *res judicata* and waiver. *Id.* Such grounds are expressly prohibited from forming the basis of a subsequent application. *Id.* The Legislature has provided a narrow exception, allowing for subsequent applications when there exists a “sufficient reason” why the grounds for relief were not asserted or inadequately asserted in the prior application. *Id.* With the exception of Petitioner’s first proposition claiming the evidence of facts not previously presented or heard, Petitioner’s claims were available to Petitioner in his prior application.² Thus, analysis turns to whether there exists a sufficient reason for not raising them, or inadequately raising them in his previous application.

A. The doctrine of *res judicata* forecloses consideration of Petitioner’s second proposition

Petitioner’s second proposition ostensibly takes issue with what he alleges to be the prosecutor’s “several direct inferences to her personal perception of the Petitioner’s sexual orientation.” Third Application at 21. Petitioner goes on to assail Judge Kellough’s ruling on *res gestae* evidence. He claims that “the OCCA’s opinion means that the Petitioner was denied his Due Process right to present witness in his own defense, since the witness he was prevented from calling was intended to rebut the very theory the OCCA was using to justify the introduction of this evidence.” Third Application at 25. Petitioner raised this *precise* claim his First Application for relief, and the OCCA has affirmed the District Court’s denial of relief on that claim. *Yerton v. State*, PC-2014-1054 at 2.

Petitioner’s argument to present the argument once again it tangled in an incoherent legal-sounding verbiage: “By denying Post Conviction Relief you would be agreeing with the OCCA that this issue is now anticipatorily procedurally barred and the Petitioner is no longer able to pursue these lines in an appeal back to the trial court.” Third Application at 27. Of course, this

² Petitioner repeatedly states throughout the Third Application that the OCCA held his instant claims were “unexhausted.” Third Application at 5; 14. Nothing within the OCCA’s holding states what Petitioner contends.

Court is bound by the rulings of the superior court, and its holding. He presents no reason, let alone a sufficient reason, why this Court should ignore the doctrine of *res judicata*, or the procedural bar imposed by 22 O.S. § 1086.

B. Petitioner's third proposition fails to present a sufficient reason

The third proposition simply argues that “a fundamental miscarriage of justice has occurred in his case that resulted in his unjust, wrongful, and illegal incarceration, due to the steadfast and persistent perjurious statements of his son, Bella Mendoza, as well as the TPD lead detective, Diana Baumann, and ADA Sara McCamis.” Third Application at 29. Nearly each paragraph of the proposition is smattered with the phrase “**steadfast and persistent perjurious statements**” as though it offers some special legal effect. (emphasis in original). It does not. Petitioner simply revisits his arguments against the evidence presented at trial, failing to present anything approximating a sufficient reason why this claim was inadequately raised in his previous applications. He simply reiterates his argument that “By denying Post Conviction Relief this Honorable Court would be agreeing with the OCCA that this issue is not anticipatorily procedurally barred, and the Petitioner is no longer able to pursue these lines in an appeal back to this Honorable Court.” Third Application at 31. This argument fares no better than it did in the previous claim. This Court therefore dismisses Petitioner’s third proposition.

C. Petitioner fails to present a sufficient reason in his fourth proposition

Petitioner misunderstands the procedural dynamic of subsequent application in his fourth proposition. He claims that “Petitioner argued both Federal and State claims in his discussion of the supporting facts.” Third Application at 31 – 32. Petitioner contends that “a holding that Petitioner failed to exhaust his federal due process claims because of the style of his presentation, rather than the substance, violates due process and should not be given deferential treatment under AEDPA.” Third Application at 32. This Court does not analyze Petitioner’s claims under the federal Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214, or under federal habeas law. 28 U.S.C. § 2254. Oklahoma Court’s sitting in post-conviction are open to anyone who claims “that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.” 22 O.S. § 1080(a). This means that Petitioner’s federal constitutional and State law claims were just as susceptible to review in his two previous application as they are now. Petitioner’s fundamentally flawed analysis, producing

legal conclusions that border on nonsensical, fail to produce a sufficient reason for this Court to consider.

The Third Application also revives Petitioner's claim that he suffered ineffective assistance of appellate counsel. Third Application at 32. He contends that his appellate counsel "should be held to be ineffective for failure to adhere to the rules of the Court of Criminal Appeals, when such failure causes this court to refuse to consider Federal Constitutional transgressions in Petitioner's trial." *Id.* Ironically, Petitioner's claim that some failure on appellate counsel's part foreclosed State court review of federal constitutional claims itself relies on the U.S. Constitution's Sixth Amendment. *See also Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 8300 ("[a] first appeal as of right ... is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney."). While this claim is facially meritless, this Court need not dispose of the claim on its merits. Petitioner raised the claim of ineffective assistance of appellate counsel in his First Application, and the OCCA affirmed the District Court's denial of this claim. *Yerton v. State*, PC-2014-1054 at 4 – 5. Even if Petitioner had not raised his ineffective assistance of appellate counsel claim in his First Application, he fails to present any reason—let alone a sufficient one—why this new take on appellate counsel's performance was not raised in previous applications.

In sum, Petitioner's claim—to the extent that any sense can be made of it—is without merit and fails to present a material issue of fact in support of a sufficient reason why whatever it is he now raises could not have been raised in previous applications. His renewed claim against appellate counsel is barred by *res judicata*, and 22 O.S. § 1086. Thus, Petitioner's fourth proposition is dismissed.

D. Petitioner's fifth proposition is frivolous and fails to present a sufficient reason

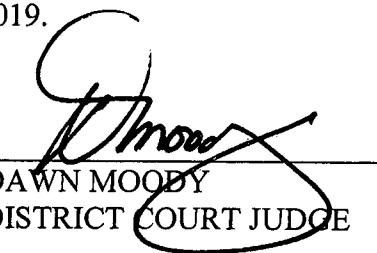
Petitioner does not even attempt to present a claim for relief upon which relief can be granted in his fifth proposition. Rather, he argues that "By denying Post Conviction Relief this Honorable Court would be allowing the State (Tulsa County) to continue to endorse Tulsa County's ranking near the top for the United State's percentage of wrongful convictions." Third Application at 34. Oklahoma's Post-Conviction Procedure Act is open to anyone convicted of or sentences for a crime claiming one of the enumerated categories under 22 O.S. § 1080. Petitioner's discourse on exonerations fails to present any actual issue for this Court to consider. Thus, this Court dismisses his fifth proposition.

CONCLUSION

Petitioner's Third Application fails to present a material issue of fact for this Court to consider, and no purpose would be served by further proceedings. Petitioner's obsession with matters rightfully before the trier of fact are not within the purview of this Court, and fails to fashion a reason why this Court should excused the procedural bar foreclosing presentation on those matters. He fails to make out a *prima facie* 22 O.S. § 1080(d) claim; his claims against the prosecutor's statements have already been addressed directly by the OCCA; his attacks on the evidence presented against him fails to present any sufficient reason why he could not have raised claims of perjury in his previous applications; he misunderstands his procedural posture and the law governing post-conviction claims; and his fifth proposition is blatantly frivolous and fails to present a claim upon which relief can be granted. This Court therefore should, and hereby does, dismiss Petitioner's Third Application for Post-Conviction Relief.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's Third Application for Post-Conviction Relief is **DISMISSED**.

SO ORDERED this 8 day of Oct, 2019.


DAWN MOODY
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

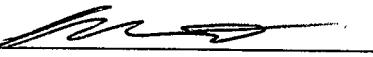
This Court certifies that on the date of filing, a true and correct copy of the above and foregoing Order was placed in the United States Mail with sufficient postage affixed thereto, addressed to:

Robert Roland Yerton, Jr., DOC 663423
James Crabtree Correctional Center
216 N. Murray Street
Helena, OK 73741-1017

-&-

Randall Young, OBA 33646
Assistant District Attorney
500 South Denver, Suite 900
Tulsa, Oklahoma 74103-3832

DON NEWBERRY, COURT CLERK

BY: 

Deputy Court Clerk