

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020**

RONNIE EUGENE FUSTON,)
)
Petitioner,)
)
vs.)
)
THE STATE OF OKLAHOMA,)
)
Respondent.)

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner Ronnie E. Fuston respectfully requests this Court permit him to proceed in forma pauperis on his Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals. Petitioner is without ample funds to file this Petition. (See attached Affidavit.)

Petitioner was previously found indigent in the District Court of Oklahoma County and was permitted to file without costs in the Oklahoma Court of Criminal Appeals.

Respectfully submitted,

ROBERT A. RAVITZ
Public Defender of Oklahoma County

By:



ANDREA DIGILIO MILLER (OBA No. 17019)
Specially Assigned Counsel
800 N. Harvey Avenue, Suite 317
Oklahoma City, Oklahoma 73102
(405) 208-6161

COUNSEL FOR PETITIONER, MR. FUSTON



IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JUL 24 2017

THE STATE OF OKLAHOMA,	)	Case No. CF-2013-0438	RICK WARREN
	)		COURT CLERK
Plaintiff,	)	TYPE OF APPEAL	46_____
vs.	)	(X) Direct Appeal (felony)	
	)	( ) Direct Appeal (misdemeanor)	
RONNIE EUGENE FUSTON,	)	( ) Post Conviction (Capital	
	)	only; use sections I &	
Defendant.	)	IV of this form for the	
	)	Notice of Intent to Seek Review)	
	)	(X) CAPITAL	

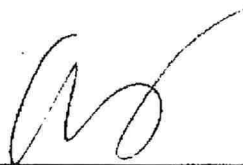
**NOTICE OF INTENT TO APPEAL;
ORDER DETERMINING INDIGENCE, APPELLATE COUNSEL,
PREPARATION OF APPEAL RECORD, AND GRANTING TRIAL COUNSEL'S
MOTION TO WITHDRAW; COURT REPORTER'S ACKNOWLEDGEMENTS; AND
NOTIFICATION OF APPROPRIATE APPELLATE COUNSEL, IF APPOINTED**

I. NOTICE OF INTENT TO APPEAL

The Defendant was sentenced on the 24th day of July 2017, for:

<u>Crime(s)</u>	<u>Statute(s)</u>	<u>Sentence</u>
Ct. 1: murder in the first degree	Okla. Stat. tit. 21, § 701.7	Death
Ct. 2: felon in possession of a firearm	Okla. Stat. tit. 21, § 1283	10 years

The Defendant intends to appeal the above conviction to the Oklahoma Court of Criminal Appeals pursuant to Okla. Stat. tit. 22, § 1051 (2011) and Okla. Stat. tit. 21, § 701.13 (2011). This Notice of Intent to Appeal and the Designation of Record, attached as Exhibit "A", pursuant to Rule 2.5(A) of the Rules of the Court of Criminal Appeals, Ch.18, App., of Title 22, was filed with the clerk of the trial court within ten (10) days of the date of the pronouncement of the Judgment and Sentence in this case and constitutes a valid initiation of a direct appeal in accordance with the Court of Criminal Appeals Rule 2.1(B). The Defendant further requests that the original record and transcripts be prepared in accordance with the completed Designation of Record, attached as Exhibit "A".



CATHERINE C. HAMMARSTEN

- Retained
- Appointed
 - Individual
 - Oklahoma Indigent Defense System
 - Oklahoma County Public Defender
 - Tulsa County Public Defender

A true and correct certified copy of the Notice of Intent to Appeal and the Designation of Record with acknowledged receipt by the court reporter were mailed this ____ day of July, 2017, to the Clerk of the Oklahoma Court of Criminal Appeals.



CATHERINE C. HAMMARSTEN

Assistant Public Defender

OBA No. 15251

320 Robert S. Kerr, Room 611

Oklahoma City, OK 73102

(405) 713-1550

II. APPLICATION FOR DETERMINATION OF INDIGENCE

In accordance with Rule 1.14 of the Rules of the Court of Criminal Appeals, 22 O.S., Ch.18, App., the Defendant submits that he is indigent and cannot pay the costs of an appeal. Counsel states:

- Indigence has been previously determined by this Court or its designee, and a pauper's affidavit in accordance with Rule 1.14(A) will be provided if this Court elects to review the Defendant's status.
- Indigence has not been previously determined by this Court or its designee, and a pauper's affidavit in accordance with Rule 1.14(A) is attached as Exhibit "C".

It is requested that appropriate counsel be appointed and transcripts be prepared at the expense of the State.



CATHERINE C. HAMMARSTEN

III. DETERMINATION OF INDIGENCE

Pursuant to Rule 1.14 of the Rules of the Court of Criminal Appeals, Ch.18, App., of Title 22, this Court finds the Defendant (X)IS ()IS NOT currently indigent.

THE COURT ORDERS:

A. Preparation of the Appeal Record:

1. A record of this case (X)IS ()IS NOT to be prepared at public expense.
2. The court reporter(s) listed below (X)SHALL () SHALL NOT be reimbursed at public expense out of the Court Fund of Oklahoma County for preparation of this record.

Name: Pamela Goold
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Preliminary Hearing dates before Judge D. Fred Doak
Transcript Date: February 5 & 7, 2014 and April 8, 2014 *in their entirety*

Name: Kim Lewin
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Motion hearings held before Judge Timothy R. Henderson
Transcript Dates: October 30, 2014 and March 17, 2015

Name: Kristin Taylor
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Pre-Trial Motion hearings and/or Status Conference held before Judge Timothy R. Henderson
Transcript Dates: April 3, 2014♣¹; May 28, 2014, September 2, 2014; December 16, 2014♣; and January 8, 2016

Name: Beth Weldon
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Motion hearing/Status Conference held before Judge Ray C. Elliott
Transcript Date: April 29, 2016

¹ A "♣" symbol indicates that this date should only require a 3rd copy of a previously transcribed and filed transcript as the court reporter has previously filed an original and 2 copies.

Name: Hannah Tipton
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Motion hearing before Judge Ray C. Elliott
Transcript Date: September 8, 2016

Name: Cynthia Jones
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Motion hearings held before Judge Ray C. Elliott
Transcript Date: September 22, 2016; November 8, 2016; November 18, 2016; March 14, 2017;
April 18, 2017; April 19, 2017; May 1, 2017 and May 15, 2017

Transcript Type: Jury Trial proceedings before Judge Ray C. Elliott
Transcript Date: May 22, 2017; May 23, 2017; May 24, 2017; May 25, 2017; May 30, 2017; May
31, 2017; June 1, 2017; June 2, 2017, June 5, 2017; June 6, 2017; June 7, 2017
and June 8, 2017

Transcript Type: Sentencing
Transcript Date: July 24, 2017

3. The return to the trial court clerk all transcripts prepared at state expense during the course of the trial proceedings. These transcripts shall be returned within ten (10) day from the date of sentencing. *See* Rule 3.2(E).

B. IF INDIGENT:

1. Catherine C. Hammarsten, trial counsel for the Defendant, timely completed this Notice of Intent to Appeal and has timely filed a Designation of Record.
2. The court reporters have been served with a copy of the Designation of Record.
3. Appropriate transcripts are ordered at public expense.
4. **Robert A. Ravitz**, ()CHIEF, CAPITAL DIRECT APPEALS DIVISION OF THE OKLAHOMA INDIGENT DEFENSE SYSTEM (if the case was tried as capital, regardless of sentence imposed) ()CHIEF OF THE GENERAL APPEALS DIVISION OF THE OKLAHOMA INDIGENT DEFENSE SYSTEM (if the case was tried as non-capital)()PUBLIC DEFENDER OF TULSA COUNTY (X)**PUBLIC DEFENDER OF OKLAHOMA COUNTY** ()A PRIVATE ATTORNEY. ADDRESS: 611 County Office Bldg, Oklahoma City, OK 73102, TELEPHONE: (405) 713-1550, is appointed to represented the Defendant on appeal.

(The public defender of Tulsa County and Oklahoma County may only be appointed if that office represented the defendant at trial unless a conflict of interest exists as determined.)

5. Any Supplemental Designation of Record by the Oklahoma Indigent Defense System pursuant to Section 1362 of Title 22 must be filed and served upon the appropriate court reporter(s) within thirty (30) days from the date of appointment.
6. Catherine C. Hammarsten, trial counsel for the Defendant, is permitted to withdraw as counsel of record.
7. Cases in which death penalty imposed: Kristi Christopher, Chief of the Capital Post-Conviction Division of the Oklahoma Indigent Defense System, is appointed to represent the defendant on the filing of an application for post-conviction relief in accordance with the provisions of §§ 1089 and 1356 of Title 22.

C. IF NOT INDIGENT:

1. N/A, trial counsel for the Defendant, timely completed this Notice of Intent to Appeal and has timely filed a Designation of Record.
2. The court reporter(s) has been served with a copy of the Designation of Record.
3. N/A, has entered his/her appearance and will represent the Defendant on appeal as retained counsel.
4. N/A, trial counsel for the Defendant, has filed a Motion to Withdraw as Counsel. The Motion is granted and trial counsel is permitted to withdraw as counsel of record.

IT IS SO ORDERED.

This Order signed this 24th day of July 2017.

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

OCT 30 2020

RICK WARREN COURT CLERK
Oklahoma County

Rick Warren

Ray C. Elliott

RAY C. ELLIOTT, District Judge

NOTE: A NOTICE OF INTENT TO APPEAL AND DESIGNATION OF RECORD MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE THE SENTENCE IS PRONOUNCED IN OPEN COURT WITH THE CLERK OF THE TRIAL COURT. THIS NOTICE AND DESIGNATION IS JURISDICTIONAL AND FAILURE TO TIMELY FILE CONSTITUTES WAIVER OF THE RIGHT TO APPEAL. A CERTIFIED COPY OF THIS NOTICE AND DESIGNATION SHALL ALSO BE FILED BY TRIAL COUNSEL WITH THE CLERK OF THE

COURT OF CRIMINAL APPEALS WITHIN TEN (10) DAYS FROM THE DATE THE NOTICE IS FILED IN THE TRIAL COURT. NO TRIAL ATTORNEY MAY BE GRANTED PERMISSION TO WITHDRAW, IF THE DEFENDANT DESIRES TO APPEAL, UNLESS THESE DOCUMENTS ARE FILED. IF THE DEFENDANT DOES NOT WISH TO APPEAL THIS CONVICTION, TRIAL COUNSEL MUST FILE AN AFFIDAVIT SIGNED BY TRIAL COUNSEL AND ACKNOWLEDGED BY THE TRIAL JUDGE WITH THE CLERK OF THE DISTRICT COURT, BEFORE TRIAL COUNSEL IS ALLOWED TO WITHDRAW, ASSERTING THAT THE DEFENDANT HAS BEEN FULLY ADVISED OF HIS/HER APPEAL RIGHTS AND DOES NOT WISH TO PURSUE AN APPEAL OF THE CONVICTION. See Rule 1.14(D).

IV. COURT REPORTER'S ACKNOWLEDGMENTS

Pamela Goold

- A. The Designation of Record, attached as "Exhibit A", was received on _____, 2016/7
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why:
- C. Number of trial and/or hearing days: _____.
- D. Estimated number of transcript pages: _____.
- E. Estimated completion date: _____.
- F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: 7/24/17

Pamela Goold
PAMELA GOOLD, Official Court Reporter

Kim Lewin

- A. The Designation of Record, attached as "Exhibit A", was received on ~~7/24~~, 2016/7
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why:
- C. Number of trial and/or hearing days: 1.
- D. Estimated number of transcript pages: 50.
- E. Estimated completion date: 11-1-17.
- F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: 7-24-17

Kim Lewin
KIM LEWIN, Official Court Reporter

Kristin Taylor

- A. The Designation of Record, attached as "Exhibit A", was received on 7/24, 2016/7
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why:

- C. Number of trial and/or hearing days: _____.
- D. Estimated number of transcript pages: 100.
- E. Estimated completion date: Oct 2017.
- F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: 7/24/17 *Kristin Taylor*
KRISTIN TAYLOR, Official Court Reporter

Beth Weldon

- A. The Designation of Record, attached as "Exhibit A", was received on _____, 2016.
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why: _____.
- C. Number of trial and/or hearing days: 1.
- D. Estimated number of transcript pages: 50.
- E. Estimated completion date: today.
- F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: 7/24/17 *Beth Weldon*
BETH WELDON, Official Court Reporter

Hannah Tipton

- A. The Designation of Record, attached as "Exhibit A", was received on _____, 2016.
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why: _____.
- C. Number of trial and/or hearing days: 1.
- D. Estimated number of transcript pages: 50.
- E. Estimated completion date: today.
- F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: 7-24-17 *Hannah Tipton*
HANNAH TIPTON, Official Court Reporter

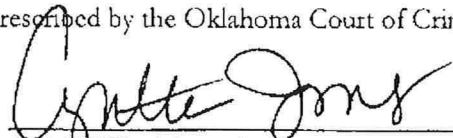
Cynthia Jones

- A. The Designation of Record, attached as "Exhibit A", was received on _____, 2016.
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2016. If payment has not been made/arranged, explain why: _____.
- C. Number of trial and/or hearing days: _____.
- D. Estimated number of transcript pages: _____.
- E. Estimated completion date: _____.

F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Criminal Appeals.

DATE: _____

7-24-17


CYNTHIA JONES, Official Court Reporter

V. NOTIFICATION OF COUNSEL, IF APPOINTED

NOTE: No Designation of Record shall be accepted for filing by the trial court clerk unless it contains one of the following:

- A. A signed acknowledgment from the court reporter(s) who reported proceedings in a case indicating receipt of the request for transcript(s), the date received, and completed financial arrangements, or an order of the trial court directing the case be prepared at public expense; or,
- B. A signed statement by the attorney preparing the designation of record stating that transcripts have not been ordered and a brief explanation why. (Example, I, _____, attorney for the Appellant, hereby state that I have not ordered a transcript because: (1.) A transcript is not necessary for this appeal; (2.) No stenographic reporting was made.)

A true and correct certified copy of this Notice and Order and the Designation of Record were mailed this ___ day of _____, 2016, to ()the Capital Direct Appeals Division, Oklahoma Indigent Defense System, P.O. Box 926, Norman, Oklahoma 73070; ()the General Appeals Division, Oklahoma Indigent Defense System, P.O. Box 926, Norman, Oklahoma 73070-0926; () Public Defender of Oklahoma County, 611 County Office Building, 320 Robert S. Kerr Avenuc, Oklahoma City, Oklahoma 73102; ()Public Defender of Tulsa County, 189 Courthouse, 500 South Denver Avenue, Tulsa, Oklahoma 74103; () _____, privately retained counsel.

Deputy Court Clerk, Oklahoma County

EXHIBIT "A"

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CF-2013-0438
)	
RONNIE EUGENE FUSTON,)	
)	
Defendant.)	

DESIGNATION OF RECORD ON APPEAL
(Capital Direct Appeal and Mandatory Sentence Review)

Defendant Ronnie E. Fuston, requests the Court Clerk to prepare the original record for purposes of lodging an appeal in the Court of Criminal Appeals. The appeal time is to start from the 24th day of July, 2017; the date Judgment and Sentence was imposed by the District Court. Said original record shall contain the following material from the District Court file:

- 1) District Court Information (and all amendments, if any);
- 2) All motions, applications, notices, and requests filed on behalf of the State or Defendant and any orders or rulings of the Court thereon;
- 3) All first and second stage jury instructions proposed and/or drafted but not given (if any), and verdict forms given by the Court and all requested jury instructions and verdict forms by the State or Defendant – this is a jury trial, there should be jury instructions and signed verdict forms;
- 4) A copy of the Court's docket sheet in this case and any Court minutes referenced therein;
- 5) The Death Warrant, Judgment and Sentence, and Summary of Facts on sentencing;
- 6) Notice of Intent to Appeal with Designation of Record attached as Exhibit "A"; Order Determining Indigence, Appellate Counsel, Preparation of Appeal Record, and Granting Trial Counsel's Motion to Withdraw; Court Reporter's Acknowledgment; and Notification of Appropriate Appellate Counsel, If Appointed.
- 7) All Amended or Supplemental Designations of Record, if any;
- 8) Capital Trial Judge's Report;

- 9) All documentary exhibits of State, Defendant, and/or Court if any;
- 10) All correspondence filed in the district court between all parties and any and all correspondence of the court to any party, if any; and
- 11) Transcript of the Motion Hearing held on August 16, 2016, before Judge Ray C. Elliott *(previously transcribed and 3 copies filed in the district court on October 31, 2016, by Court Reporter Deborah Torbert)*.

In addition to the above-numbered documents, the following portions of the record will be transcribed and assembled by the Court Reporters:

Voir dire examination, all pre-trial motion hearings, all hearings on competency, all in-camera hearings, trial docket call, all in-chamber conferences, any and all *ex-parte* records made outside the hearing of the jury, all opening statements and closing arguments of counsel; as well as all trial proceedings and evidence introduced at trial. The testimony of all witnesses both in the presence of the jury and out of the jury's presence; objections and exceptions, and arguments in support of the objections, exceptions and motions, including Motions for New Trial, as well as the sentencing transcripts, all of the above being stenographically reported. All documentary, physical, and photographic exhibits, including audio and video tape recordings, and any and all medical records or other records inspected in camera by the trial judge under seal or otherwise.

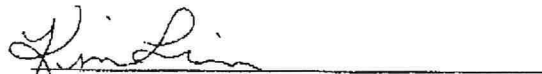


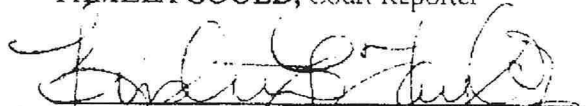
CATHERINE C. HAMMARSTEN

ACKNOWLEDGEMENTS

We, Pamela Goold, Kim Lewin, Kristin Taylor, Beth Weldon, Hannah Tipton and Cynthia Jones, Court Reporters for the above-styled and numbered case, do hereby acknowledge this request for transcripts this ____ day of July, 2017.

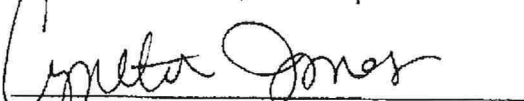

PAMELA GOOLD, Court Reporter


KIM LEWIN, Court Reporter


KRISTIN TAYLOR, Court Reporter

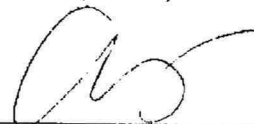

BETH WELDON, Court Reporter


HANNAH TIPTON, Court Reporter


CYNTHIA JONES, Court Reporter

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Designation was served on the Oklahoma County District Attorney, and on Court Reporters Pamela Goold, Kim Lewin, Kristin Taylor, Beth Weldon, Hannah Tipton and Cynthia Jones, who took said proceedings before Judges D. Fred Doak, Timothy R. Henderson and Ray C. Elliott respectively. Dated this ____ day of July, 2017.


CATHERINE C. HAMMARSTEN

DESIGNATION OF PARTIES

ATTORNEYS FOR DEFENDANT

Catherine C. Hammarsten, #15251
James T. Rowan, #7789
Assistant Public Defenders
Nicole Burns, *Pro hac vice*
320 Robert S. Kerr Avenue, Suite 611
Oklahoma City, OK 73102
(405) 713-1550
FAX: (405) 713-7169

ATTORNEYS FOR THE STATE

Scott Rowland, First Assistant District Attorney
Suzanne Lavenue, Assistant District Attorney
320 Robert S. Kerr Avenue, Suite 505
Oklahoma City, OK 73102
(405) 713-1600
FAX: (405) 235-1567