No. 20-7279

IN THE SUPREME COURT OF THE UNITED STATES

ONG VUE,

Petitioner

v.

STATE OF OKLAHOMA

Respondent.

On Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals

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PETITION FOR A WRIT OF CERTIORARI

Ong Vue
DOC#264881
Pro se Litigant
Dick Conner Correctional Center
129 Conner Road
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February 3, 2021

QUESTIONS PRESENTED

Whether the Oklahoma Court of Criminal Appeals application of a state procedural bar and laches to Petitioner's actual innocence claims is contrary to Fourteenth Amendment *procedural and substantive* due process protections?

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PETITION FOR WRIT OF CERTIORARI

Ong Vue respectfully petition for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

PARTIES TO THE PROCEEDING

The petitioner in this case is Ong Vue.

The respondent in this case is Mike Hunter, Attorney General for the State of Oklahoma.

OPINIONS BELOW

The November 13, 2020 Order Denying Petition for Writ of Habeas Corpus and Affirming Denial of Subsequent Application for Post-Conviction Relief is unpublished. App. 1a – 5a.

JURISDICTION

This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence."
2. The Fourteenth Amendment to the United States Constitution provides, in relevant part: "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."

STATEMENT OF THE CASE

In May 1997, the Cleveland County District Attorney charged Mr. Vue with Information based upon the affidavit of Norman Police Detective Stephen A. Lucas.

On May 05, 1998, Mr. Vue entered a plea of "nolo contendere" to the Information.

On May 29, 1998, Mr. Vue was sentenced.

On September 10, 1998, Ms. Debbie Maddox filed a 22 O.S. § 982a pleading for Mr. Vue.

On September 18, 1998, Petitioner was "resentenced" when the Cleveland County District Court granted the § 982a pleading.

On July 1, 2016, Petitioner, *pro se,* filed an Application for Post-Conviction Relief.

On September 14, 2016, this Cleveland County District Court denied relief.

On December 14, 2016, the Oklahoma Court of Criminal Appeals affirmed.

On March 27, 2017, Petitioner, *pro se,* filed an Application for Post-Conviction Relief Request for Recommendation of Appeal Out of Time.

On June 10, 2019, Petitioner, *pro se,* filed Motion for Leave to Amend Pleadings of the Subsequent Post-Conviction Application and Amended Subsequent Post-Conviction Application.

On June 24, 2019, Petitioner, *pro se,* filed a Petition for Writ of Error Coram Nobis.

On July 8, 2019, the Oklahoma Court of Criminal Appeals denied "extraordinary relief" for "challenges to the judgment and sentence must be made through post-conviction procedures and not an application for an extraordinary writ."

On July 19, 2019, Petitioner, *pro se,* filed Motion for Summary Judgment or Alternative Motion for Evidentiary Hearing.

On August 16, 2019, Petitioner, *pro se,* filed Motion for Appointment of Counsel.

On September 9, 2019, the motion was denied.

On October 11, 2019, Petitioner, *pro se,* timely appealed the denial of counsel.

In the appeal, Petitioner argues for counsel in an evidentiary hearing to establish a factual foundation as to satisfy his burden of being denied the right to appeal through no fault of his own.

On March 2, 2020, the Oklahoma Court of Criminal Appeals issued Order Affirming Denial of Subsequent Application Seeking Post-Conviction Relief.

In the Order, the OCCA concluded that "Therefore, the order of the District Court of Cleveland County denying Petitioner's pleadings that constitute a subsequent application of post-conviction relief in Case No. CF-1997-628 should be, and is hereby, **AFFIRMED**." Id.

On March 20, 2020, Petitioner filed Amended Subsequent Supplemental Application For Post-Conviction Relief Alternative Writ of Habeas Corpus.

On August 28, 2020, the Cleveland County District Court denied relief.

On September 21, 2020, Petitioner appealed to the Oklahoma Court of Criminal Appeals.

On November 13, 2020, the Oklahoma Court of Criminal Appeals denied relief.

ARGUMENT

Petitioner Vue's pleas of no contest are involuntary and he did not fully understand the consequences of his plea nor his sentence of "imprisonment for life" in light of the subsequent pleading filed by counsel of record, the same counsel that actually defaulted his time limitation to "withdraw his pleas."

The Oklahoma Court of Criminal Appeals ("OCCA") found that Petitioner's *pro se* claims for relief "failed to establish entitlement to either habeas corpus or post-conviction relief." App. 2. Under this legal procedural ruling, the OCCA determined that "the writ of habeas corpus is neither a substitute for, nor an authorization to bypass, the statutory direct appeal or post-conviction processes for challenging a Judgment and Sentence." Ibid. However, no deference need be extended to the OCCA's ruling because "the threshold burden placed upon the state to demonstrate actual prejudice by Rule 9(a) before the doctrine of laches may be triggered is *not the law in Oklahoma* and we decline to adopt any such requirement." *Thomas v. State,* 903 P.2d 328, 332 (Okl.Cr. 1995) (emphasis added). To the contrary, the *McCleskey* Court held that "when prisoner files second or subsequent habeas petition, government bears burden of pleading abuse of writ which is satisfied if it notes petitioner's prior writ history, identifies claims appearing for first time, and alleges that petitioner has abused writ, and burden then shifts to petitioner to excuse failure to raise claim earlier by showing cause as well as actual prejudice *or* by showing fundamental miscarriage of justice[.]" *Id.* 499 U.S. 467 (1991).

Furthermore, the OCCA, under Oklahoma's Constitution, is the court of last resort in ALL criminal-related proceedings even habeas corpus. *See State ex rel. Coats v. Hunter,* 580 P.2d 158 (Okl.Cr.1978) (held that traditional writs of habeas corpus in criminal cases is incorporated into Post-Conviction Relief Act and considered a criminal action). In short, the OCCA is the sole authority over the "imposition" (Oklahoma Statutes Title 21) and "execution" (Oklahoma Statutes Title 57) of Petitioner's sentence; however, the two are often irreconcilable to Petitioner whose crimes were committed "prior to July 1, 1998." See 21 O.S. §§ 12.1, 13.1 ("parole eligibility" and "earned credit

eligibility" a substantial part of the imposed sentence prior to *any* executive functions).

However, prior to enactment of the 85% Rule of 21 O.S. § 13.1, the trial court was without jurisdiction to interpret Title 57 Law in a Title 21 proceeding of the § 982a "judicial review." *See Nestell v. State,* 954 P.2d 143, 145 (Okla.Crim.App. 1998) (The sentencing matrix of the Act is not applicable to him, *other than to establish parole eligibility.* Okla. Laws 1997, ch. 133, §§ 3, 13, and 26; 21 O.S.Supp.1997, §§ 9 and 13; 57 O.S.Supp.1997, § 332.7.) (emphasis added); *cf. Castillo v. State,* 954 P.2d 145, 148 (Okla.Crim.App. 1998) (Therefore, matters relating to parole eligibility rest in the hands of the executive branch of government and, as the district court found, are outside the jurisdiction of the district court.).

Petitioner, as a layman of the law, indigent and "bereft of friends and without family connections," *Application of Fowler,* 356 P.2d 770, 778 (Okl.Cr. 1960), could not *artfully* "prove" that he was denied an appeal through no fault of his own when he was *actually* denied an appeal when counsel expressed to him that she would "take care of it." Nominally, "in the absence of an evidentiary hearing on a motion to withdraw plea, appellate court is *unable to review the trial court's denial of Petitioner's motion.*" *Anderson v. State,* 422 P.3d 765, 767 (Okla.Crim.App. 2018) (emphasis added).

Because of this ERRONEOUS ruling, Petitioner is subjected to an unfair process in being denied access to 22 O.S. § 1080 in a misplaced reliance on *Logan v. State,* 293 P.3d 969 (Okl.Cr. 2013) and 22 O.S.2011, § 1086. App. 3. Nonetheless, *Logan* generally stands for claims of ineffective assistance of "appellate" counsel not for trial counsel's ineffectiveness to effectuate a timely appeal. The OCCA's ruling resulted in a decision that was based on an unreasonable determination of the facts in light of the

evidence presented in the State court proceeding to the contrary of its applicable case law of *Blades v. State,* 107 P.3d 607 (Okla.Crim.App. 2005). The *Blades* Court stated that, "[h]owever, an Appellant being granted and/or denied an appeal through no fault of his/her own is not one of the enumerated provisions of Section 1080, which allows the District Court to apply the provisions of Section 1085. The role of the District Court in addressing a request for an appeal out of time through the application for post-conviction relief pursuant to *Smith,* **is to conduct an evidentiary hearing and provide findings of fact and conclusions of law upon which this Court will then determine if an appeal out of time should be granted.**" *Id.* 107 P.3d at 608 (emphasis added).

This Court determined that "even the voluntariness and intelligence of a guilty plea can be attacked on collateral review only if first challenged on direct review." *Bousley v. United States,* 118 S.Ct. 1604, 1610 (1998). Petitioner, using English as his second language, *reasonably* believed that he conveyed his wish to appeal to counsel, Ms. Maddox and *reasonably* believed that she "understood" him when she replied "I will take care of it." Under both substantial and procedural Due Process of Law protections, "the application to withdraw guilty plea AND the evidentiary hearing are BOTH **necessary and critical steps in securing the appeal rights** as provided by Rule 4.2. *Randall v. State,* 1993 OK CR 47, ¶ 5, 861 P.2d 314, 316." *Anderson, supra,* 422 P.3d at 767 (emphases added).

Accordingly, the State's ability to respond is not hindered by the fact *simpliciter* that as of 2018, the District Attorney of Cleveland County sought to punish Petitioner for exercising his postconviction rights under 22 O.S. § 1080 *et seq.* in the form a letter to the Oklahoma Pardon and Parole Board "objecting" to Petitioner's parole. Moreover, the

State cannot be prejudiced or assert prejudice as the proponent to the "offer of proof." *See generally United States v. Adams,* 271 F.3d 1236 (10th Cir. 2001); Fed. Rules Evid. Rule 103(a)(2), 28 U.S.C.A. *See also* Application for Court of Assume Original Jurisdiction and Motion to Determine Question of Law (App. 16 – 45).

Federal Rules of Criminal Procedure, Rule 11, 28 U.S.C.A. provides the framework in which "the court must address the defendant personally in open court." Id. (b)(1), (2), (3). To the contrary, Petitioner was substantially denied this procedure:

> THE COURT: And, Ms. Maddox, you've discussed this with Mr. Vue. Are you convinced that this is the best thing for him?
> MS. MADDOX: Yes, sir, I am, your Honor.
> THE COURT: And that he's doing it voluntarily and that he's competent to waive his rights and do this?
> MS. MADDOX: Absolutely.
> THE COURT: Mr. Perrine, are you, likewise, convinced?
> MR. PERRINE: I am.
> THE COURT: Do you think it's best for him?
> MR. PERRINE: I do.

App. 22 – 23. Also, the "offer of proof" lacked the prerequisite of taking *actual* evidence to support its judgment.

To be absolutely certain, Petitioner requested trial counsel to "appeal" his case. Petitioner, ignorant, believed trial counsel carried out her duty when she filed for "judicial review" on September 10, 1998 for Mr. Vue. The "judicial review" was granted in favor of running Petitioner's time "concurrently."

Petitioner was not informed that he could appeal this judgment further when he was still represented by the Oklahoma Indigent Defense System capital division so he legally believed his case was over and that in accordance with the § 982a language Mr. Vue believed there was an actual liberty interest in "a chance to receive parole review in

approximately fifteen years". *See also* Petition for Writ of Habeas Corpus with Brief-in-Support (App. 64 – 68). As such, Petitioner did not understand the "consequences" of his plea when the court assessed that "parole review" was a part of Petitioner's sentence of "imprisonment for life." See and compare 21 O.S.Supp. 1997, § 701.9 "imprisonment for life without parole."

Nevertheless, "imprisonment for life" and "imprisonment for life without parole" CANNOT legally be similarly defined. The actual prejudice suffered is that without any *actual* liberty interest component, all three sentences under 21 O.S. § 701.9 are no different than DEATH. *Cf. Jae Lee v. United States,* 137 S.Ct. 1958 (2017) ([D]efendant demonstrated reasonable probability that he would not have pleaded guilty if he had known that it would lead to mandatory deportation, and thus, plea-counsel's erroneous advice as to deportation consequences of defendant's guilty plea prejudices defendant and amounted to ineffective assistance.)

Of course, when Petitioner, *pro se,* applied for "post-conviction" he could not *legally* be given "postconviction relief," because the "independent rule" of the 10-day default was not initially applied to him; instead the State relied on laches. However, unlike the white person, Loyd Kennedy, CRF-1972-187, who was granted "postconviction relief" without application of laches, Petitioner was denied relief through an inadequate process without a reasonable chance to vindicate his constitutionally protected rights. That is, the voluntariness of Petitioner's plea implicating trial counsel under the Sixth and Fourteenth Amendments could only be ascertained in an evidentiary hearing. *See Brady v. United States,* 397 U.S. 742, 749 (1970) (The voluntariness of

Brady's plea can be determined only by considering all of the relevant circumstances surrounding it).

Moreover, there is no question that, under federal standards, Petitioner's request for counsel to appeal is itself *ipso facto* ineffective assistance of counsel under Sixth and Fourteenth Amendment norms of *Roe v. Flores-Ortega,* 120 S.Ct. 1029 (2000) when it was counsel who actually defaulted the ten-day period. So not only was counsel ineffective in this manner, she also coerced Petitioner to plead "no contest" because counsel introduced a person that specifically told him "guilty meant death," and that Petitioner was "guilty." Counsel was also certainly well aware of the facts she presented in the § 982a pleadings when she coerced Petitioner to plea "no contest."

Rather than the process due: allow Petitioner to prove that he was denied an appeal through no fault of his own under Rule 2.1(E), *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18 App. (2011) Petitioner was denied on the basis that he got "some" process in the Cleveland County District Court with "evidence" of his docket sheet to prove the voluntariness of his plea. This inadequate process did not consider the relevant circumstances surrounding the plea.

In the case of *Bousley v. United States,* this Court determined that "Petitioner's claim may still be reviewed in this collateral proceeding if he can establish that the constitutional error in his **plea colloquy** "has probably resulted in the conviction of one who is actually innocent. *Murray v. Carrier,* 477 U.S., at 496, 106 S.Ct., at 2649 (emphasis added). To establish actual innocence, petitioner must demonstrate that, "'in light of all the evidence,'" "it is more likely than not that no reasonable juror would have convicted him." *Schlup v. Delo,* 513 U.S. 298, 327-328, 115 S.Ct. 851, 867-868, 130

L.Ed.2d 808 (1995) (quoting Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 160 (1970))." *Id.*118 S.Ct. 1604, 1611 (emphasis added) The distinguishing factor is that the *Bousley* Court did not reference "new" evidence when reviewing the "plea colloquy." *See* also May 5, 1998 "Plea Transcripts" (Attachments D and E, Appendix to Petition for Writ of Habeas Corpus with Brief-in-Support). App. 36 – 73.

Pertinent to Petitioner is that Mr. Vue's "plea colloquy" is in contrary to the substantial "offer of proof" requirement of Federal Rules of Evidence Rule 103(a)(2). Because Petitioner pled "nolo contendere," the trial court, according to OCCA precedent, "may look to other sources to obtain a factual basis for accepting the defendant's plea." *Wester v. State,* 764 P.2d 884, 887 (Okla.Crim.App. 1988). Petitioner has always asserted that his confession taken by Wisconsin Law Enforcement was coerced and not a product of free will.

This lack of factual basis, in not without more, when considering the "well-pleaded facts" of Ms. Maddox's § 982a pleading.

Nominally, a "no contest" plea does not actually admit guilt and self-defense is a complete defense. Petitioner notes that he only 19 years old, a refugee that fled persecution, with a limited education, and no experience with the adult criminal justice system facing a DEATH PENALTY. Ms. Debbie Maddox knowing this legal theory, asserted, post-conviction, that "Ong Vue pleaded guilty to the offenses at issue because he understood that his use of force was excessive, not necessarily unreasonable, but certainly excessive." Defendant's Petition to Modify Sentence Pursuant to 120 Day Judicial Review Procedures (September 10, 1998).

In support of this contention, Ms. Debbie Maddox describes elements that does not meet the legal standard that "Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof" of 21 O.S.Supp. 1997, § 701.7:

a. The EVIDENCE developed by the Norman Police Department indicated that the confrontation involved five to ten Bahamian males, some of whom had armed themselves with 15 to 20 inch machetes and two revolvers;

b. Three of these machetes and two revolvers were recovered from a dumpster and identified as those belonging to the Bahamian males by the girlfriend of Avery Simmons;

c. The EVIDENCE also indicates that Avery Simmons was extremely upset about the theft of his car stereo, and intentionally excluded the help of the Norman Police Department and instead, pursued a self-help repossession action by approaching a group of Asian males that lived in a nearby apartment late at night in a very aggressive manner;

d. While there is no legal authority in the State of Oklahoma for a person to use deadly force without attempting retreat or limiting oneself to the use of reasonable force, as opposed to deadly force, the facts of this case plainly indicate that this altercation was initiated by the Bahamian males making threats of violence and/or the nonverbal exhibition of a willingness to fight;

e. The actions of Ong Vue[1] were excessive and not entirely reasonable but his actions were in direct response to the considerable provocation of the Bahamian males;

f. When Mr. Vue saw one of his friends [Kou Vang[2]] running away from the apartment complex yelling and obviously afraid, and then he saw his other friend [Ger Moua[3]] bleeding, presumably inflicted by one of the Bahamian males wielding a machete, he reacted by using excessive force, as opposed to reasonable force, which in the heat of conflict is a very fine line;

g. And judgments concerning the use of appropriate force are exceedingly difficult for anyone to make, but especially for a distraught teenage male attempting to defend his friends from a clear threat of physical violence.

Id. at 1 – 2. In this light, another court of last resort held that "apparent assertion of self-defense during plea colloquy rendered factual basis for guilty plea inadequate." *State v. Urbina,* 221 N.J. 509, 526, 115 A.3d 261, 272 (2015). Most prejudicial to Petitioner is that during a "critical proceeding" this information was held silent by both the prosecution and defense but more troubling is that the § 982a facts was brought to the full attention of the District Court and Prosecuting Attorney.

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[1] Christina Doan will testify [ ] that she was with the defendant on the night of the homicide and that the defendant was threatened and physically assaulted by the victims. (Defendant's Compliance with Discovery Order, (April 27, 1998), at 1)

[2] Kou Vang is expected to testify [ ] that he was with the defendant and friends visiting other friends who lived in the Washington Square apartments when they were assaulted and chased by several African-American males including the victim. He is expected to testify that he called 911 at the Short Stop on Lindsey Avenue. (Defendant's Compliance with Discovery Order (April 27, 1998), at 2-3)

[3] Ger Moua is expected to testify that he got out of Christina Doan's car and proceeded to the apartment of friends they were visiting at the Washington Square Apartments when he was threatened and assaulted by the victims and persons with the victims. He is expected to testify that the victims or persons with the

Accordingly, "where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." *Hill v. Lockhart,* 474 U.S. 52, 59 (1985).

The State CANNOT be prejudiced or assert prejudice as the proponent to the "offer of proof." Its ability to respond to the Petition is not hindered by the Oklahoma Constitution's requirement mandated by Section 20 of Article 2.

In *Lott v. United States,* this Court concluded that "[yet] the [nolo contendere] plea itself does not constitute a conviction nor hence a 'determination of guilt.' It is only a confession of the of the well-pleaded facts in the charge. It does not dispose of the case. It is still up to the court 'to render judgment' thereon ... Necessarily, then, it is the judgment of the court—not the plea—that constitutes the determination of guilt.'" *Id.,* 367 U.S. 421, 426-427, 81 S.Ct. 1563, 1567, 6 L.Ed.2d 940 (1961).

According to *Lott,* the judgment of the court is in contrary to substantial due process of law norms when Petitioner's coerced confession was used to convict during a nolo contendere plea in contravention to the Fifth and Fourteenth Amendments wherein Petitioner *actually* moved to suppress the confession. See Defendant's Motion to Suppress Confession (February 6, 1998); compare *Crane v. Kentucky,* 476 U.S. 683 (1986) (exclusion of evidence relating to the voluntariness of a confession is error where the confession is critical to the state's case).

The due process violation here is that Petitioner's counsel caused the involuntariness of his pleas and the "judgment" of the court must arise from "direct

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victims were carrying long machete knives and that he was attacked and cut by someone with the victim's

evidence" apart from the "well-pleaded facts in the charge." Petitioner was misled to understand that "no contest" and "guilty" are two separate and distinct pleas when he was legally misadvised that he could not be given a death sentence with the "no contest" plea and that since he was already "guilty," the judge would sentence him to "death" without such a plea.

Petitioner's inartful attempts to introduce material facts that his plea was not voluntary was not even considered. That is, Mr. Luther Grisso, the former investigator in Petitioner's case, admitted that Petitioner pleas were indeed coerced and Mr. Vue was "screwed," "it was a bad deal," and "it shouldn't have happened." That Mr. Grisso was not the person sent by Ms. Maddox to inform Petitioner on the day of jury selection that he was already guilty and "guilty meant death." Furthermore, Petitioner's counsel referred to him as "boat people," and vocalized to Ms. Gayle Morrison that Mr. Vue would not be treated as a "human" in "red neck country." There can be no doubt that Ms. Maddox was well aware of existing "implicit racial biases" when she made this statement to Ms. Morrison.

CONCLUSION

The OCCA rendered a ruling to the opposite of *McCleskey v. Zant,* without shifting the burden to "petitioner to excuse failure to raise claim earlier by showing cause as well as actual prejudice or by showing fundamental miscarriage of justice." *Id.,* 499 U.S. 467 (1991). Moreover, because Petitioner was not allowed the fair opportunity to "prove that he was denied an appeal through no fault of his own," Okla. Crim. Ct. Rule,

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group. (Defendant's Compliance with Discovery Order (April 27, 1998), at 1)

Rule 2.1(E), the OCCA applied an inadequate bar of 22 O.S. § 1086, "excluding a timely appeal."

In the instant petition at bar, Petitioner's counsel did not "make the adversarial testing process work in [Mr. Vue's] particular case." *Strickland v. Washington,* 104 S.Ct. 2052, 2066 (1984). That is, Ms. Debbie Maddox coerced Petitioner to plead "no contest" when he would not plead "guilty" when he asserted a defense to the charges. Ms. Maddox knew of this defense when she submitted the uncontroverted facts to the sentencing court in the § 982a, 120-day judicial review, specifically, "judgments concerning the use of appropriate force are exceedingly difficult for anyone to make, but especially for a distraught teenage male attempting to defend his friends from a clear threat of physical violence." Id. at 2. Under these facts on the record, the use of the confession at the change-of-plea proceeding was not harmless in determining the verdict where it is generally accepted that a "no contest plea does not *actually* admit guilt." *See Crane, supra,* 476 U.S. at 690 (We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard.).

Along with these facts, Ms. Maddox also had firsthand knowledge that Petitioner was "boat people" and he could not be "humanized" in "redneck country." Most disturbing is Ms. Maddox *knew* "[t]his is redneck country and no one will give this kid a chance if you [Ms. Gayle Morrison] don't help. I need you to 'humanize' him to the court. Explain what is Hmong, their history and culture. Make the judge and jury see the person, not just the crime. If you don't help, for sure he will get the death sentence ... the [May 29, 1998] Declaration was strong enough that the prosecution did not want to go to jury trial and was willing to lessen the requested sentencing to life in prison. Based on

what I had learned about Ong Vue, the circumstances of his case, his self-defense motive, and his youth at the time, life in prison stills seemed like a very harsh sentence to me even though Mr. Vue was spared the death sentence." Exhibit A to Attachment A.

In this light, "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill, supra,* 474 U.S. at 59.

Because of the "erroneous advice as to eligibility for parole under the sentence agreed to in the plea agreement," *Hill, supra,* of which "parole review in fifteen years" provided no basis for any kind of "liberty interest," Petitioner would not have pleaded at all. *Cf. Jae Lee v. United States,* 137 S.Ct. at 1965 (The error was instead one that affected Lee's understanding of the consequences of pleading guilty.).

WHEREFORE, Petitioner prays this Honorable Court GRANT the instant Petition and REMAND his case for an evidentiary hearing. In the alternative, GRANT a writ of habeas corpus on Mr. Vue's behalf.

REASON FOR GRANTING WRIT

This Court should not extend deference to the OCCA's procedural ruling for the State of Oklahoma does not recognize the burden shifting process before the doctrine of laches may be triggered. Unlike AEDPA, Oklahoma imposes no statute of limitations to bring an action under 22 O.S. § 1080 or Rule 2.1(E), *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18, App.

Nonetheless, the OCCA clearly recognizes that the "applicability of the doctrine of laches necessarily turns on the facts of each particular case." *Thomas v. State, supra,* 903 P.2d at 332. Unlike the established case law cited herein, Petitioner was deprived of a "direct appeal" when he, without a high school diploma or GED and English being his

second language, believed he "effectively" communicated with counsel to appeal for him.

However, without such a "proceeding" to which Mr. Vue had a clear, legal right, the OCCA found that no such Fourteenth Amendment protection could be *construed* from Petitioner's *pro se* claims, to the contrary of its own rules, and that "Petitioner did not seek to withdraw his plea within applicable time periods, and thus failed to perfect direct appeal proceedings from his Judgment and Sentence." App. 1 – 2. In other words, Mr. Vue's inartful *pro se* arguments were not worthy of any evidentiary hearing into the voluntariness of his plea and the fact *simpliciter* that Petitioner indeed requested Ms. Maddox to file his appeal for him thereby denying him an appeal through no fault of his own; the only standard under the only applicable court rule, having "force of statute."

The circular reasoning used by the OCCA cannot be legally sound under the facts of Petitioner's *particular* case. That is, Petitioner *timely* requested that counsel file his appeal. Instead, counsel filed a 120-day judicial review averring facts that Petitioner was a "distraught teenage male attempting to defend his friends from a clear threat of physical violence." Of course, the OCCA did not conclude that Petitioner had a right to appeal the modification of his sentences after the GRANT of the 120-day judicial review.

Because Petitioner was legally advised that "parole review in fifteen years" implicated "early" release, a "substantial benefit" he would be eligible for eventual "release." However, in light of this insubstantial process, the State sought to "object" to Petitioner's "parole" in 2018, when the State did not object in 2012 nor 2015, and recommended that Petitioner "serve the full term of his sentence," or simply that he be incarcerated until dead. The particular fact is that without compliance with its own statute of 19 O.S. § 215.39 in the District Attorney Narrative Report, the State objected

because Petitioner was pursuing his "post-adjudication" appeals and stipulated facts not in evidence to the Oklahoma Pardon and Parole Board. In this light, it is unfair and unethical to concede that "parole review" is a *legal* part of Petitioner's imposed sentence at the same time rescind that agreement and assert its police power to *ex post facto* enhance Petitioner's sentence to that of Life Without Parole in 2018 when those *original* negotiations arose from a constitutionally protected process in 1998, of which the complaint is that the 1998 proceedings were in violation of Petitioner's Fourteenth Amendment guarantee to Due Process of Law.

Furthermore, because the OCCA did not review *de novo* the voluntariness of Petitioner's plea but merely acquiesced to the District Court's finding without benefit of an evidentiary hearing the OCCA has denied Petitioner *substantial due process of law* in accordance with *procedural due process* in line with *Carpenter v. State,* 929 P.2d 988 (Okl.Cr.1996) and the minimal standard of *North Carolina v. Alford,* 400 U.S. 25, 37 – 38 (1970).

THEREFORE, for the foregoing reasons the instant writ should be GRANTED.

February 3, 2021

Respectfully submitted,

Ong Vue
129 Conner Road
Hominy, Oklahoma 74035
Pro Se Litigant

VERIFICATION/PROOF OF SERVICE

Pursuant to Rule 12, "An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion."

I declare under Penalty of Perjury that the foregoing of this Petition for Writ of Certiorari is true and correct.

I certify that on February 3, 2021, I mailed a copy of this Petition for Writ of Certiorari with U.S. postage pre-paid to:

Mike Hunter, Attorney General
Office of the Attorney General
State of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105