

APPENDIX "D"

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

FILED

**IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

JAMES JERMAINE WOODFORK,)

DEC 30 2020

Petitioner,)

**JOHN D. HADDEN
CLERK**

-vs-

No. PC-2020-585

THE STATE OF OKLAHOMA,)

Respondent.)

**ORDER AFFIRMING DENIAL OF
APPLICATION FOR POST-CONVICTION RELIEF**

The Petitioner has appealed to this Court from an order of the District Court of Oklahoma County denying his application for post-conviction relief in Case No. CF-1995-1587. On February 12, 1996, Petitioner entered a negotiated plea of guilty to Count 1 – Possession of a Controlled Dangerous (Cocaine) Substance With Intent to Distribute; and Count 2 – Possession of a Controlled Dangerous Substance (Marijuana) With Intent to Distribute. He was sentenced on each count to a term of five years, with the sentences suspended and allowed to run concurrently. 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.

APPENDIX D

In this matter, Petitioner contends that he is actually innocent of Count 1 – Possession of a Controlled Dangerous (Cocaine) Substance With Intent to Distribute because he was only in possession of one baggie of cocaine that was for his own use and not for distribution. He asks that his conviction for Count 1 be vacated.

Post-conviction review 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. All issues that were previously raised and ruled upon by this Court in Petitioner's direct appeal are procedurally barred from further review under the doctrine of *res judicata* and all issues that could have been previously raised but were not are waived for further review. 22 O.S.2011, § 1086; *Logan, supra*. The burden is on the Petitioner to show that his claims are not procedurally barred and that there is sufficient reason to allow the claims to be the basis of a post-conviction application. 22 O.S.2011, § 1086; *see also Davis v. State*, 2005 OK CR 21, ¶ 2, 123 P.3d 243, 244.

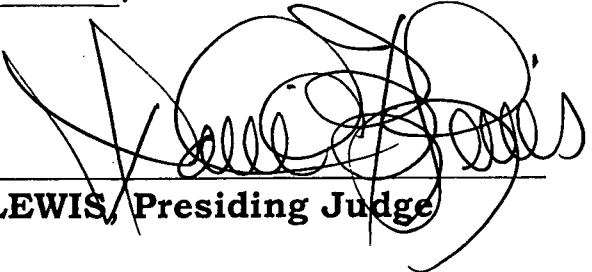
The issues Petitioner asserts in this matter could have and should have been raised both prior to the entry of his negotiated plea of guilty, and in direct appeal proceedings from his Judgment and

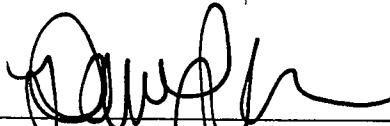
Sentence. Petitioner failed to previously assert the issues and they are therefore waived and procedurally barred. 22 O.S.2011, § 1086; *Logan, supra*. We find that Petitioner has not met his burden to show that his issues are not procedurally barred and that there is sufficient reason to allow the issues to be the basis of a post-conviction application. 22 O.S.2011, § 1086; *see also Davis*, 2005 OK CR 21 at ¶ 2, 123 P.3d at 244.

Therefore, the order of the District Court of Oklahoma County denying Petitioner's application for post-conviction relief in Case No. CF-1995-1587 should be, and is hereby, **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 forthwith upon the filing of this decision with the Clerk of this Court.

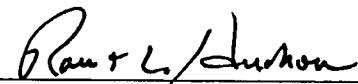
IT IS SO ORDERED.

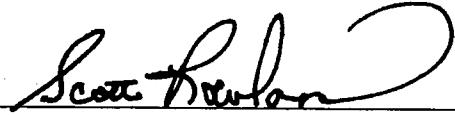
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this
30th day of December, 2020.


DAVID B. LEWIS, Presiding Judge

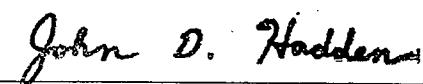

DANA KUEHN, Vice Presiding Judge


GARY L. LUMPKIN, Judge


ROBERT L. HUDSON, Judge


SCOTT ROWLAND, Judge

ATTEST:


John D. Hadden

Clerk

PA

IN THE DISTRICT COURT OF OKLAHOMA COUNTY JUL 22 2020
STATE OF OKLAHOMA

JAMES JERMAINE WOODFORK,)	RICK WARREN
)	COURT CLERK
Petitioner,)	46
)	
v.)	Case No. CF-1995-1587
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

STATE'S RESPONSE TO APPLICATION FOR POST-CONVICTION RELIEF

COMES NOW the State of Oklahoma, by and through David W. Prater, the duly elected District Attorney of District Seven (7), Oklahoma County, State of Oklahoma, and Jennifer M. Hinsperger, Assistant District Attorney, and respectfully requests this Honorable Court to deny Petitioner's Application for Post-Conviction Relief in all respects.

STATEMENT OF THE CASE

On February 12, 1996, Petitioner, represented by counsel, entered a negotiated plea of guilty to the crimes of Possession of a Controlled Dangerous Substance (Cocaine) with Intent to Distribute (Count 1) and Possession of a Controlled Dangerous Substance (Marijuana) with Intent to Distribute (Count 2), as charged in the above-numbered case. The Honorable Nancy L. Coats accepted the plea and sentenced Petitioner in accordance with the plea agreement to concurrent terms of five (5) years imprisonment, all suspended under certain terms and conditions of probation. *See Exhibit 1, Plea and Guilty Summary of Facts.* Petitioner was advised of and acknowledged his right to appeal and the manner in which to invoke that right. *Id.*, Part B at 2. However, he neither timely moved to withdraw his guilty plea nor otherwise attempted to appeal his convictions. *See Exhibit 2, Docket.* Petitioner's suspended sentence expired on February 11, 2001. *Id.*

On June 26, 2020, Petitioner, *pro se*, filed the instant Application for Post-Conviction Relief,¹ requesting that this Court vacate his convictions and sentences. He also filed an Application for Evidentiary Hearing pursuant to 22 O.S. § 1084 on July 9, 2020. Petitioner raises the following propositions of error in support of his relief:

- I. Trial counsel was ineffective for advising Petitioner to plead guilty to Possession of CDS (Cocaine) with Intent to Distribute without investigating and without first advising Petitioner that he had a viable defense to the charge in violation of Oklahoma's Constitution Article II Section 20, and the United States Constitution's 6th and 14th Amendments.
- II. Petitioner is actually innocent of the charge of Possession of CDS (Cocaine) as alleged in Count One of the Information.

ARGUMENT AND AUTHORITY

I. Petitioner's decades-long inaction in seeking relief warrants application of laches.

Petitioner's inordinate delay in raising these issues for the first time warrants application of the doctrine of laches. It has long been held that “[a] defendant in a criminal case may waive any right not inalienable, given him by the Constitution or by the statute, either by express agreement or conduct, or by such failure to insist upon it in seasonable time” *Sarsycki v. State*, 1975 OK CR 165, ¶ 6, 540 P.2d 588, 590 (quoting Syllabus of *Rapp v. State*, 1966 OK CR 51, 413 P.2d 915). Consistent with this principle, the Court of Criminal Appeals has held that “the doctrine of laches may prohibit the consideration of an application for post-conviction relief where petitioner has forfeited that right through his own inaction.” *Thomas v. State*, 1995 OK CR 47, ¶ 15, 903 P.2d 325, 330; *Paxton v. State*, 1995 OK CR 46, ¶ 8, 903 P.2d 325, 327.

¹ The State notes that Petitioner's application is not itself verified, as required by 22 O.S. § 1081. *See Dixon v. State*, 2010 OK CR 3, ¶ 6 n.3, 228 P.3d 531, 532 n.3 (A “verified” application is one that is either notarized or given before a person authorized to administer oaths or is one that is signed under penalty of perjury as specified under 12 O.S.Supp.2002, § 426.”). However, Petitioner has attached to his application a sworn affidavit (Pet's Exh. B), wherein he makes assertions of fact in support of his claims of error. *See* 22 O.S. § 1081 (“Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct.”).

In this case, Petitioner has waited twenty-four years since his Judgment and Sentence became final and nineteen years since he fully discharged his sentence to seek relief from his convictions. The legal and alleged factual bases for these belated claims have been available to him at all times during the intervening years. Petitioner offers no good or sufficient reason for his failure to seasonably assert these issues. Under the circumstances, consideration of his Application for Post-Conviction Relief should be barred by laches.

I. Consideration Petitioner's claims is procedurally barred by waiver.

Even if laches were not applied here, consideration of Petitioner's claims is procedurally barred by the doctrine of waiver. The Post-Conviction Procedure Act, 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, 775-76; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384. 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 previously raised and ruled upon on direct appeal 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, 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. 22 O.S. § 1086; *Berget v. State*, 1995 OK CR 66, ¶ 6, 907 P.2d 1078, 1081. This requires a showing that some impediment external to the defense prevented the petitioner and counsel from properly raising the claim. *Johnson*, 1991 OK CR 124, ¶ 7, 823 P.2d at 373. Petitioner has the burden of establishing that his claim could not

innocence, not mere legal insufficiency.”). As Petitioner provides no reason sufficient to overcome procedural default, consideration of these propositions is waived.

Where a claim is procedurally barred, there is no need to address the merits of the issues presented. *Boyd v. State*, 1996 OK CR 12, ¶ 3, 915 P.2d 922, 924. As aptly stated by the Court of Criminal Appeals:

In the case *sub judice*, Petitioner was afforded an opportunity to pursue a direct appeal; he specifically declined to do so. As a result, he is bound by that earlier decision; as a consequence of that decision, he has forfeited his right to have this Court consider [issues], which would have been readily available for that direct appeal.

Wallace v. State, 1997 OK CR 18, ¶ 5, 935 P.2d 366, 370 (citation omitted). Therefore, the Petitioner’s allegations of error need not be addressed, and his Application for Post-Conviction Relief should be summarily denied as a matter of law. *See* 22 O.S. § 1083(C).

CONCLUSION

Petitioner’s inexcusable twenty-four-year delay in seeking relief on these issues warrants application of the doctrine of laches to bar consideration of his post-conviction application. Furthermore, even if laches were not applied here, Petitioner’s claims are waived for post-conviction review as they could have been but, for no sufficient reason, were not raised in a timely direct appeal. As such, there are no issues of material fact for which an evidentiary hearing is necessary to resolve.

WHEREFORE, the State of Oklahoma respectfully prays that this Honorable Court will deny Petitioner’s Application for Post-Conviction Relief and request for evidentiary hearing in all respects.

Respectfully Submitted,

DAVID W. PRATER
DISTRICT ATTORNEY

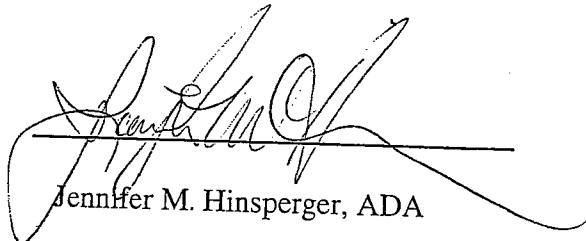
BY: 

JENNIFER M. HINSPERGER, OBA # 31586
ASSISTANT DISTRICT ATTORNEY
320 Robert S. Kerr, Suite 505
Oklahoma City, OK 73102
Phone: (405) 713-1600
Fax: (405) 235-1567

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the State's Response to Application for Post-Conviction Relief was mailed on the date of filing to:

James Woodfork. DOC # 243884
James Crabtree Correctional Center
21 N. Murray St.
Helena, OK 73741


Jennifer M. Hinsperger, ADA

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JUL 22 2020

RICK WARREN COURT CLERK
Oklahoma County



APPENDIX "B"

IN THE DISTRICT COURT OF OKLAHOMA COUNTY STATE OF OKLAHOMA

JAMES JERMAINE WOODFORK,)
Petitioner,) FILED IN DISTRICT COURT
) OKLAHOMA COUNTY
v.) Case No. CF-1995-1587 AUG 06 2020
THE STATE OF OKLAHOMA,)
Respondent.) RICK WARREN
) COURT CLERK
) 81

ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF

This matter comes on for consideration of Petitioner's Application for Post-Conviction Relief filed in the above-referenced case and the State's Response thereto, and the Court being fully advised finds as follows:

MATERIALS REVIEWED FOR DECISION

The Court has reviewed the following materials in reaching its decision: Petitioner's Application for Post-Conviction Relief, and attachments thereto, filed on June 26, 2020; Petitioner's Application for Evidentiary Hearing, filed on July 9, 2020; the State's Response to Application for Post-Conviction Relief, and attachments thereto, filed on July 21, 2020; and the appearance docket for Oklahoma County Case No. CF-1995-1587.

PROCEDURAL HISTORY

On February 12, 1996, Petitioner, represented by counsel, entered a negotiated plea of guilty to the crimes of Possession of a Controlled Dangerous Substance (Cocaine) with Intent to Distribute (Count 1) and Possession of a Controlled Dangerous Substance (Marijuana) with Intent to Distribute (Count 2), as charged in Oklahoma County Case No. CF-1995-1587. The Honorable Nancy L. Coats accepted the plea and sentenced Petitioner in accordance with the plea agreement to concurrent terms of five (5) years imprisonment, all suspended under certain terms and conditions of probation.

At the time of sentencing, Petitioner was advised of and acknowledged his right to appeal and the manner in which to invoke that right. However, he did not pursue an appeal. Petitioner's suspended sentence expired on February 11, 2001.

On June 26, 2020, Petitioner, *pro se*, filed the instant Application for Post-Conviction Relief,¹ requesting that this Court vacate his convictions and sentences. He also filed an

¹ Petitioner's application is not itself verified, as required by 22 O.S. § 1081. See *Dixon v. State*, 2010 OK CR 3, ¶ 6 n.3, 228 P.3d 531, 532 n.3 ("A 'verified' application is one that is either notarized or given before a person authorized to administer oaths or is one that is signed under penalty of perjury as specified under 12 O.S.Supp.2002, § 426.").

APPENDIX "B"

Application for Evidentiary Hearing pursuant to 22 O.S. § 1084 on July 9, 2020. Petitioner raises the following propositions of error in support of his relief:

Proposition I Trial counsel was ineffective for advising Petitioner to plead guilty to Possession of CDS (Cocaine) with Intent to Distribute without investigating and without first advising Petitioner that he had a viable defense to the charge in violation of Oklahoma's Constitution Article II Section 20, and the United States Constitution's 6th and 14th Amendments.

Proposition II Petitioner is actually innocent of the charge of Possession of CDS (Cocaine) as alleged in Count One of the Information.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Court finds that Petitioner has forfeited his right to consideration of his post-conviction application through his own inaction. *Thomas v. State*, 1995 OK CR 47, ¶ 15, 903 P.2d 328, 330; *Paxton v. State*, 1995 OK CR 46, ¶ 8, 903 P.2d 325, 327. The issues Petitioner asserts here were available to him from the time he entered his guilty in 1996 and at all times since then. Yet he offers no reason or excuse for his inordinate delay in seeking relief. Under the circumstances, consideration of Petitioner's Application for Post-Conviction Relief is barred by laches. Accordingly, it is denied.

Further, the Court further finds that even if laches did not apply here, Petitioner's propositions of error are procedurally barred by the doctrine of waiver. The Court of Criminal Appeals has made very clear that the Post-Conviction Procedure Act, 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, 775-76; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384. 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 previously raised and ruled upon by [the Court of Criminal Appeals] 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. 22 O.S. § 1086. This requires a showing that some impediment external to the defense prevented the petitioner from properly raising the claim. *Johnson*, 1991 OK CR 124, ¶ 7, 823 P.2d at 373. Petitioner has the burden of establishing that his claim is not procedurally barred. *Robinson v. State*, 1997 OK CR 24, ¶ 17, 937 P.2d 101, 108.

However, Petitioner has attached to his application a sworn affidavit (Pet's Exh. B), wherein he makes assertions of fact in support of his claims of error. See 22 O.S. § 1081 ("Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct").

As noted above, both of Petitioner's claims could have been raised in a timely appeal from his guilty plea, which he chose to forgo. Petitioner offers no sufficient reason for this Court to now consider these issues on post-conviction review. Propositions I and II are waived. For this reason also, Petitioner's application is denied.

This Court has disposed of Petitioner's application as a matter of law based upon the pleadings and the record. There is no issue of material fact for which an evidentiary hearing is necessary to resolve. 22 O.S. §§ 1083, 1084; *Fowler v. State*, 1995 OK CR 29, ¶ 8, 896 P.2d 566, 566; *Logan*, 2013 OK CR 2, ¶ 20-22, 293 P.3d at 978.

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

Dated this 11 day of August, 2020.


HEATHER E. COYLE

DISTRICT JUDGE

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

AUG - 7 2020


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. (2020).

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2020, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to:

James Jermaine Woodfork, DOC #243884
James Crabtree Correctional Center
216 N. Murray St.
Helena, OK 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

IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAMES JERMAINE WOODFORK,
Appellant,

vs.

THE STATE OF OKLAHOMA,
Appellee.

Case No: PC -2020-S85
(Supplied by Clerk)

APPELLANT'S BRIEF-IN-SUPPORT OF PETITION-IN-ERROR

COMES NOW James Jermaine Woodfork, the Appellant, appearing pro se, and Respectfully submits his Brief-In-Support of the Petition-In-Error, and shows the Honorable Court the Following:

Appellant will be referred to herein by name or as the "Appellant". References appearing in parenthesis will refer to Exhibits presented to the district Court and will refer to the Order of the Oklahoma County District Court Denying Post-Conviction Relief.

Upon Consideration by this Court, Appellant respectfully requests that the decision of the Oklahoma County Court denying Post-Conviction Relief be Reversed, and that Appellant's conviction for Possession of Cocaine with Intent to Distribute (Count One) be Vacated.

PROPOSITION ONE

THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING APPELLANT POST-CONVICTION RELIEF ON THE BASIS OF LACHES AND PROCEDURAL BAR.

Appellant asserts that the District Court of Oklahoma County abused its discretion by denying him post-conviction relief on the basis of laches and procedural bar.¹ Specially, relying on **Thomas v. State**, 1995 OK CR 47 ¶ 15, 903 P.2d 328, 330 and **Paxton v. State**, 1995 OK CR 46 ¶8, 903 P.2d 325, 327 the lower court concluded that because “of his own inaction,--- Petitioner’s Application for Post-Conviction Relief is barred by laches.” (See Order Denying Post-Conviction Relief, page 2). It is submitted that the above quoted decision is was arbitrary and was made without proper consideration of the facts and relevant law. *See Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170 (held abuse of discretion standard is satisfied if Petitioner demonstrates the lower court’s conclusion was arbitrary; was made without proper consideration of the relevant facts and law, and/or was made against the logic and effect of the facts).

¹ In the Order denying PCR the lower court noted that Petitioner’s Application was not verified as required by 22 O.S. § 1081, but did not deny relief on this bases. it is well settled law that pro se pleadings should be construed liberally, *Haines v. Kerner*, 404 U.S. 519 (1972) . Furthermore, Title 12 O.S. § 2005 provides “the clerk shall not refuse to accept for filing any paper because it is not in proper form as required by these rules or any local rules or practices.”

First and foremost, none of the cases relied on by the lower court to deny Appellant post-conviction relief involved a claim of actual innocence. Furthermore, in **Ex Parte Snow**, 183 P.2d 588, 594 (Okl.Cr.1947) this Court held that the doctrine of laches cannot be applied to a case where the petitioner presents "clear and convincing evidence" of a constitutional violation, "[t]o say the least, we are of the opinion that after fifteen (15) years delay, such a case to form a basis for relief by habeas corpus must be founded upon proof that is clear, and convincing." *Id.* In the case herein, the evidence presented to the lower court (see Appellant's Post-Conviction Exhibit's A & B) certainly made out a *prima facie* case of "clear and convincing evidence" where, according to the State's own version of events, Appellant was only in possession of one small baggie of cocaine and there was no evidence to substantiate the charge that Appellant sought to distribute the drug.

In fact, in the Response filed by the District Attorney (See State's Response to Application for Post-Conviction Relief), the State wholly failed to acknowledge or address the evidence presented in police reports and other documents (see Appellant's Post-Conviction Exhibit's A & B) which clearly indicated that this Appellant is both actually and factually innocent of the charge of Possession of Cocaine with Intent to Distribute. Likewise, the lower court's Order denying post-conviction relief also fails to acknowledge or address the important evidence of

Appellant's innocence presented in exhibits. Hence, it has therefore been clearly demonstrated that the lower court's decision was made arbitrarily and without any consideration of the important facts which substantiated Appellant's claim. Accordingly, the lower court clearly abuse its discretion when it denied Appellant post-conviction relief without **any acknowledgment** of the important evidence underlying Appellant's claim. *See Neloms v. State, supra.*

It is further submitted that the lower court's decision failed to consider the law relevant to adjudicating claims involving actual innocence. Contrary to the two state authorities used by the lower court to deny post-conviction relief, claims of actual innocence are not subject to the rules of laches, res judicata or procedural bar. In **Schlup v. Delo**, 513 U.S. 288 (1995) the United States Supreme Court held "when an otherwise time-barred habeas petition presents evidence of innocence so strong that court cannot have confidence in the outcome--- the court may consider the petition on the merits." In **McQuiggin v. Perkins**, 569 U.S. 383, 401 (2013), the Supreme Court echoed its previous holding in **Schlup** and held that the actual innocence gateway should open to reach the merits of a procedurally barred claim when strong evidence of innocence is presented. See also, **McQuiggin v. Perkins**, 569 U.S. 383, 401 (2013) (held that the actual innocence gateway should open to reach the merits of a procedurally barred claim when strong evidence of innocence

is presented).² Furthermore, In United States v. McGirt, WL3848063 the United States Supreme Court recently vacated a 1999 Oklahoma conviction upon a claim of lack of jurisdiction, even though over twenty years passed, the state never alleged that the doctrine of laches barred **McGirt's** jurisdictional claim. Surely, consistent with the above referenced authority, Appellant's claim of actual and factual innocence could not be subjected to a time-bar. To hold otherwise would violate Appellant's rights to due process and equal protection of the law under Oklahoma's Constitution Article II, Section 7, and the U.S. Constitution's Fourteenth Amendment. Accordingly, because the lower court's decision was contrary to the law relevant to reviewing claims of actual innocence, the court abused its discretion by denying Appellant post-conviction relief.

CONCLUSION

The lower court abused its discretion and acted arbitrarily when it failed to acknowledge or address the important evidence underlying Appellant's claim of actual innocence. Furthermore, the lower court's refusal to apply the law relevant to reviewing claims of actual innocence also resulted in a decision that was contrary to clearly established state and federal law. Therefore, the decision of Oklahoma County District Court Denying Post-Conviction Relief should be

² Likewise, this Court has ignored the time bar in cases where constitutional violations were alleged many years after conviction, even where actual innocence was NOT alleged. See **Allen v. State**, 874 P.2d 60, 64 (Okl.Cr.1994); **Jones v. State**, 704 P.2d 1140 (Okl.Cr.1985); **Castleberry v. State**, 590 P.2d 697, 701 (Okl.Cr.1979) **Stewart v. State**, 495 P.2d 834, 836 (Okl.Cr.1976).