

No. _____

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

DUSTIN MELVIN DAVISON,)
)
 Petitioner,)
)
 vs.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner Dustin M. Davison 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.

Petitioner was previously found indigent in the District Court of Oklahoma County and was permitted to file without costs in the Oklahoma County District Court as well as the Oklahoma Court of Criminal Appeals: (<http://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=2018-373>)

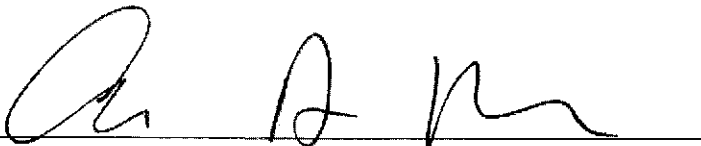
Petitioner has attached the District Court certified copy of the *Notice of Intent to Appeal, Order Determining Indigence, Appellate Counsel, et al.*, Parts II and III, Pages 2-5: Finding of Indigence [Page 3, Part III] and Order Appointing Public Defender [Pages 3 and 4, Part III., Subparagraph B (4)] See also Rule 1.14, Rules

of the Oklahoma Court of Criminal Appeals, Okla. Stat. tit. 22, Ch. 18, App. (2021), which provides the qualification for a defendant to have court-appointed counsel and/or transcripts at public expense.

Respectfully submitted,

ROBERT A. RAVITZ,
PUBLIC DEFENDER OF OKLAHOMA COUNTY

By:


ANDREA DIGILIO MILLER, (OBA # 17019)
Appellate Defense Counsel
By Special Appointment of the
Oklahoma County Public Defender's Office
800 N. Harvey Avenue, Suite 317
Oklahoma City, Oklahoma 73102
(405) 208-6161
admiller@okcu.edu

ROBERT A. RAVITZ, (OBA # 7428)
Public Defender of Oklahoma County
MARVA A. BANKS, (OBA # 21593)
Assistant Public Defender
320 Robert S. Kerr, Suite 400
Oklahoma City, Oklahoma 73102
(405) 713-1550
ravitz.robert@oscn.net

ATTORNEYS FOR PETITIONER


MELANIE FREEMAN-JOHNSON

- 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 April, 2018, to the Clerk of the Oklahoma Court of Criminal Appeals.


MELANIE FREEMAN-JOHNSON

Assistant Public Defender
OBA No. 30805
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.


MELANIE FREEMAN-JOHNSON

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 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 held before Judge D. Fred Doak (3rd copy request)
Transcript Date: September 23, 2015 in its entirety (an original and 2 copies have been filed in the District Court on March 14, 2017. It is requested that an additional copy be provided for the purposes of Capital and Capital Post-Conviction proceedings)

Name: Deborah Torbert
Mailing Address: 321 W. Park Avenue
Okla. City, OK 73102

Transcript Type: Motion hearings
Transcript Date: November 9, 2016; December 21, 2016; April 10, 2017; August 18, 2017; and September 29, 2017

Transcript Type: Motion hearings requiring a 3rd copy be provided
Transcript Date: February 17, 2017; October 27, 2017 (filed under Seal)

Transcript Type: Jury Trial proceedings
Transcript Date: February 5, 6, 7, 8, 9, 12, 13, and 15, 2018

Transcript Type: Sentencing
Transcript Date: April 5, 2018

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. Melanie Freeman-Johnson and James T. Rowan, trial counsel for the Defendant timely completed this Notice of Intent to Appeal and have 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 represent 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. Melanie Freeman-Johnson and James T. Rowan, trial counsel for the Defendant, are 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 9th day of April, 2018.

Cindy H. T.
CINDY H. TRUONG, District Judge

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

FEB 13 2021

RICK WARREN COURT CLERK
Oklahoma County

Rick Warren

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 Gould

- A. The Designation of Record, attached as "Exhibit A", was received on _____, 2018.
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2018. 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: 4-9-18

Pamela Gould

PAMELA GOULD, Official Court Reporter

Deborah Torbert

- A. The Designation of Record, attached as "Exhibit A", was received on 4-9, 2018.
- B. IF NOT INDIGENT, satisfactory arrangements ()have ()have not been made for payment of the transcript cost. These financial arrangements were completed on _____, 2018. If payment has not been made/arranged, explain why:
- C. Number of trial and/or hearing days: 16.
- D. Estimated number of transcript pages: 2,000.
- E. Estimated completion date: June 2018.
- 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: 4-9-18

Deborah Torbert

DEBORAH TORBERT, 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 _____, 2018, 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 Avenue, 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-2015-3992
)
 DUSTIN MELVIN DAVISON,)
)
 Defendant.)

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

Defendant Dustin Melvin Davison, 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 5th day of April, 2018; 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; and
- 8) Capital Trial Judge's Report; and

- 9) All documentary exhibits of State, Defendant, and/or Court if any; and
- 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 Preliminary Hearing held on September 23, 2015, before Judge D. Fred Doak (*previously transcribed and 2 copies filed in the district court on March 14, 2017, by Court Reporter Pamela Goold – an extra copy is necessary as this is a Capital case, and is being requested at this time within the Notice of Intent to Appeal*); and
- 12) Transcript of Motion Hearing held February 17, 2017 (*previously transcribed and 2 copies filed in the district court on March 6, 2017, by Court Reporter Deborah Torbert – an extra copy is necessary as this is a Capital case, and is being required at this time within the Notice of Intent to Appeal*); and
- 13) Transcript of Motion Hearing (In Camera Ex Parte Proceedings) held October 27, 2017 (*previously transcribed and 2 copies filed UNDER SEAL in the district court on October 30, 2017, by Court Reporter Deborah Torbert – an extra copy is necessary as this is a Capital case, and is being required at this time within the Notice of Intent to Appeal*); and
- 14) Transcript of Motion to Withdraw hearing held October 13, 2017 (*previously transcribed and filed in the district court October 18, 2017 [an original and 3 copies have been filed]*).

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.


MELANIE FREEMAN-JOHNSON

ACKNOWLEDGEMENTS

We, Pamela Goold and Deborah Torbert, Court Reporters for the above-styled and numbered case, do hereby acknowledge this request for transcripts this 9 day of April, 2018.


PAMELA GOOLD, Court Reporter


DEBORAH TORBERT, 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 and Deborah Torbert, who took said proceedings before Judges D. Fred Doak and Cindy H. Truong respectively. Dated this ____ day of April, 2018.


MELANIE FREEMAN-JOHNSON

DESIGNATION OF PARTIES

ATTORNEYS FOR DEFENDANT
Melanie Freeman-Johnson, #30805
James T. Rowan, #7789
Assistant Public Defenders
320 Robert S. Kerr Avenue, Suite 611
Oklahoma City, OK 73102
(405) 713-1550
FAX: (405) 713-7169

ATTORNEYS FOR THE STATE
Gayland Gieger and Kelly Collins
Assistant District Attorneys
320 Robert S. Kerr Avenue, Suite 505
Oklahoma City, OK 73102
(405) 713-1600
FAX: (405) 235-1567