

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP - 3 2021

BRANDON SHANE HARRIS,

JOHN D. HADDEN
CLERK

Petitioner,

v.

No. PC-2021-359

THE STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

On April 26, 2021, Petitioner Harris, pro se, appealed to this Court from the denial of his Application for Post-Conviction Relief in Canadian County District Court Case No. CF-2018-44. The District Court's order is **AFFIRMED**.

On January 14, 2020, Harris, represented by counsel, entered a guilty plea to an amended charge¹ of Trafficking in Illegal Drugs in Canadian County Case No. CF-2018-44, and was sentenced to twenty-seven (27) years in the Oklahoma Department of Corrections. Harris did not move to withdraw his plea or otherwise appeal his conviction. A review of this Court's docket reveals this is Harris's

¹ Harris was initially charged with Aggravated Trafficking in Illegal Drugs after four prior felony convictions.

first application for post-conviction relief filed with this Court in this matter.

Harris's post-conviction application filed in the district court alleged ten (10) propositions of error: 1) selective enforcement of traffic laws; 2) ineffective assistance of counsel; 3) possession and dominion and control; 4) racial profiling; 5) excessive sentence; 6) unlawful detention; 7) insufficiency of the evidence; 8) unreasonable bail; 9) untimely probable cause determination; and 10) violation of right to speedy trial. In his application filed with this Court, Harris reiterates these claims and requests this Court suppress the evidence used against him, vacate or dismiss his conviction, or, in the alternative, reduce his sentence.

In an order entered and filed March 2, 2021, the District Court of Canadian County, the Honorable Paul Hesse, District Judge, denied Harris's application for post-conviction relief. Judge Hesse found that Harris was advised, when he entered his plea, that because of his prior felony convictions, his offense was an 85% crime. Harris confessed that he was guilty of the charged offense,

and was sentenced pursuant to his plea agreement. Harris was advised of his right to appeal, but did not move to withdraw his plea or otherwise appeal his conviction. Judge Hesse found that Harris could have raised all of the issues presented in his post-conviction application on direct appeal, but he did not, and the same were waived. The court determined Harris was not entitled to relief and denied his request for the same.

We agree. The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a Petitioner with a second direct appeal. *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569; *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774. A claim that could have been raised on direct appeal, but was not, is waived. *Fowler*, 1995 OK CR 29, ¶ 2, 896 P.2d at 569; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384-85; *Johnson v. State*, 1991 OK CR 124, ¶ 4, 823 P.2d 370, 372.

We find no error in Judge Hesse's ruling denying Harris's request for relief. The pleading filed with this Court contains no

explanation for Harris's failure to seek to withdraw his plea or otherwise appeal his conviction. Harris's claim is waived.

As Harris has failed to show entitlement to relief in a post-conviction proceeding, the order of the District Court of Canadian County, denying his application for post-conviction relief in Case No. CF-2018-44 is **AFFIRMED**.

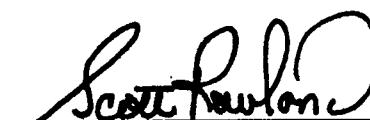
The Clerk of this Court is directed to transmit a copy of this order to the District Court of Canadian County, the Honorable Paul Hesse, District Judge; the Court Clerk of Canadian County; Petitioner and counsel of record.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT

this 3rd day of September, 2021.


SCOTT ROWLAND, Presiding Judge

Robert L. Hudson
ROBERT L. HUDSON, Vice Presiding Judge
Gary L. Lumpkin
GARY L. LUMPKIN, Judge
David B. Lewis
DAVID B. LEWIS, Judge

ATTEST:

John D. Hadden
Clerk

PA

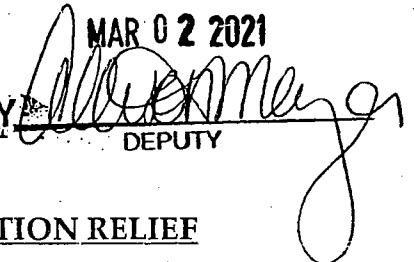
IN THE DISTRICT COURT OF CANADIAN COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
Plaintiff,)
)
vs.)
)
BRANDON SHANE HARRIS,)
Defendant.)

CF-2018-44

FILED
MARIE HIRST COURT CLERK
CANADIAN COUNTY, OKLAHOMA

MAR 02 2021

BY 
DEPUTY

ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF

Before the Court is the Defendant's Application for Post-Conviction Relief filed on February 25, 2021. The Defendant raises the following ten propositions of error in his application: (1) selective enforcement of law, (2) ineffective assistance of counsel, (3) possession and dominion and control, (4) racial profiling/discrimination, (5) excessive sentence, (6) unlawful detention, (7) insufficient evidence of guilt, (8) unreasonable bail amount, (9) untimely probable cause determination, and (10) violation of right to speedy trial.

The Defendant was initially charged by information with the felony offense of Aggravated Trafficking in Illegal Drugs (methamphetamine). The Defendant faced a possible penalty of twenty (20) years to life because of his prior felony convictions. Also, the 85% Rule would apply to any sentence if convicted of this offense. On January 14, 2020, the Defendant entered a negotiated plea of guilty to the amended felony offense of Trafficking in Illegal Drugs- a non-85% offense. The Defendant admitted in plea paperwork that he "was in possession of a trafficking quantity of methamphetamine in

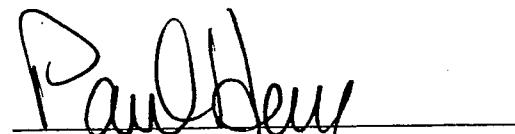
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the care in which [he] was traveling." He also admitted to committing the acts as charged in the information. The Defendant was sentenced to serve twenty-seven (27) years pursuant to the plea agreement. The Defendant did not file a direct appeal of his conviction or sentence, nor did he attempt to timely withdraw his plea.

Post-conviction review provides petitioners with 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. Accordingly, post-conviction claims which could have been raised in prior appeals but were not are generally considered waived. *Moore v. State*, 1995 OK CR 12, ¶ 4, 889 P.2d 1253, 1255-56. The Court finds that the Defendant has waived consideration of all ten propositions of error, as these issues were not, but could have been, raised on direct appeal. The Court further finds that the Defendant has failed to show entitlement to any relief in a post-conviction proceeding.

IT IS THEREFORE ORDERED BY THE COURT that the Defendant's Application for Post-Conviction Relief is **DENIED**. The court clerk is directed to mail a certified copy of this order to the defendant and to provide a copy to the Office of the District Attorney.

Dated this 2nd day of March, 2021.



PAUL HESSE
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I, Marie Hirst, Court Clerk for Canadian County, hereby certify that on the 2nd day of March, 2021, a true and correct copy of the foregoing Order was mailed to each of the attorneys listed below:

Brandon Harris, DOC # 854702, Lawton Correctional Center, 8607 SE Flower Mound Road, Lawton, OK 73501

Austin Murrey, Canadian County District Attorney, 303 N. Choctaw, El Reno, OK 73036

Marie Hirst, Court Clerk

By Deputy Court Clerk

I, Marie Hirst, Court Clerk of Canadian County, Oklahoma, do hereby certify that the above and foregoing is a true and correct copy as the same in my office.
BY Marie Hirst
DATED 3/2/2021 DEPUTY