

IN THE DISTRICT COURT OF CREEK COUNTY, STATE OF OKLAHOMA
SAPULPA DIVISION

FILED IN DISTRICT COURT
CREEK COUNTY SAPULPA OK

THE STATE OF OKLAHOMA,

Plaintiff,

v.

DARRIN LYNN PICKENS.

Defendant.

NOV 03 2021

TIME 3:22 pm

Amanda VanOrsdel, COURT CLERK

Case No. CRF-1990-66
Court of Criminal Appeals No.
MA-2021-1090

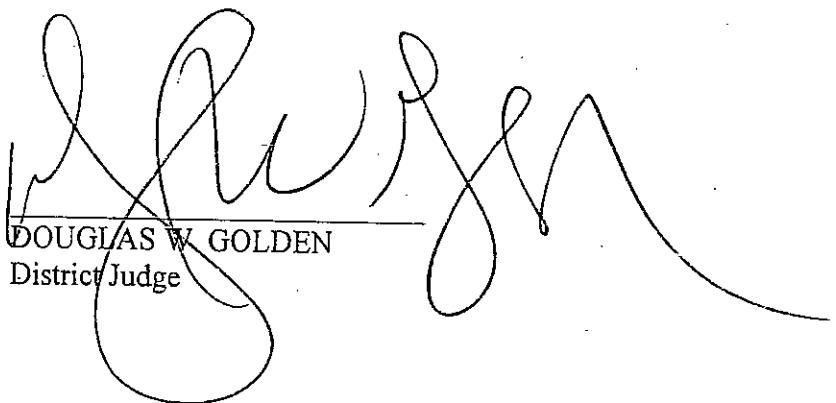
MEMORANDUM

Pursuant to the October 25, 2021, Order of the Court of Criminal Appeals in the above styled matter, a certified copy of the trial court's Order denying relief is attached.

A certified copy of this Memorandum shall be forwarded to the Clerk of the Court of Criminal Appeals.

Dated this 1st day of November, 2021.

DOUGLAS W. GOLDEN
District Judge



Certificate of Mailing

The undersigned certifies that a true and correct copy of this Order was mailed, postage prepaid, this 30 day of November, 2021 to:

Darrin Lynn Pickens, #142619
129 Conner Rd.
Hominy, OK 74035

And

Max Cook
Creek County District Attorney
222 East Dewey
Sapulpa, OK 74066

And

Michael Loeffler
First Assistant
Creek County District Attorney
222 East Dewey
Sapulpa, OK 74066

And

Clerk of the Court of Criminal Appeals
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 4
Oklahoma City, OK 73105

Sara Sow

I, Amanda VanOrsdel, Court Clerk for Creek County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the Court Clerks office of Creek County, Oklahoma, This

3rd day of November 21
By Aris Dose Deputy Amanda VanOrsdel
Court Clerk

FILED IN DISTRICT COURT
IN THE DISTRICT COURT OF CREEK COUNTY, STATE OF ~~OKLAHOMA~~
OKLAHOMA
COUNTY SAPULPA OK.

NOV 03 2021

TIME 3:21 pm

Amanda VanOrsdel, COURT CLERK

STATE OF OKLAHOMA,)
PLAINTIFF,)
)
-vs-)
)
DARRIN LYNN PICKENS,) CASE NO. CRF-1990-66
PETITIONER/DEFENDANT.) MA-2021-1090
) [Court of Criminal Appeals]

POST-CONVICTION FINDINGS

Section V, Rules of the Court of Criminal Appeals
22 O.S. 1080

1. GENERAL CHARGE:

- A. Count I- Murder- 1ST Degree
- B. Count II- Feloniously carrying firearm
- C. Count III-Robbery with firearms

After remand, amended on April 25, 1995 dropping Count III.

2. JUDGMENT AND SENTENCE:

- A. Count I – Death by lethal injection
- B. Count II - Life
- C. Count III- 10 years

All counts to run consecutive. These sentences reversed and remanded for new trial by Order of the Court of Criminal Appeals filed November 14, 1994.

Ultimately, after exhaustive appeals and several trials, only the conviction on Count I remains and the punishment has been modified to life imprisonment without the possibility of parole. See *Pickens v. State*, 2005 OK CR 27.

3. APPLICATION FOR POST CONVICTION RELIEF: Petitioner's Second

Application for Post-Conviction Relief was filed on or about December 5, 2005. Petitioner filed an Amended Second Application for Post-Conviction Relief on or about February 6, 2006. A Third Application for Post-Conviction Relief was filed on November 6, 2013, and a Fourth Application filed March 31, 2014. These were denied. On September 29, 2014, the Defendant/Petitioner filed his 5th Application for Post-Conviction Relief, which was denied. His 6th Application for Post-Conviction relief was filed January 17, 2017, and was denied. Petitioner/Defendant now files his 7th Application for Post-Conviction Relief.

4. RESPONSE OF DISTRICT ATTORNEY: Yes, as filed October 22, 2021.

5. AUTHORIZED FORM USED? Yes

6. PROCEEDINGS IN THE COURT OF CRIMINAL APPEALS, IF ANY:

Pickens v. State, 1994 OK CR 74, 885 P. 2d 678 - reversed original conviction and remanded for new trial; followed by a re-trial appeal in *Pickens v. State*, 2001 OK CR, 19 P.3d 866, wherein the murder conviction was affirmed, but the conviction on Count II was reversed and remanded for new trial. First Application for Post-Conviction Relief, PCD-2000-285 was denied. The U.S. Supreme Court denied Defendant's Petition for Writ of Certiorari on June 28, 2002. *Pickens v. Oklahoma*, 536 U.S. 961,122 S.Ct. 2668, 153 L.Ed. 2d 842 (2002).

Second Application for Post-Conviction Relief filed in October 2002 resulted in remand on the issue of mental retardation. *Pickens v. State*, 2003 OK CR 16, 74 P.3d 601. The subsequent jury finding of no mental retardation then reversed. *Pickens v. State*, 2005 OK CR 27, where the murder conviction death sentence was vacated and modified to life imprisonment without the possibility of parole.

Petitioner appealed the July 3, 2014, denial of his fourth Application for Post-Conviction Relief, and the Court of Criminal Appeals declined jurisdiction on September 15, 2014, in matter PC-2014-733. Petitioner's appeal of the trial court's denial of his 5th Post-Conviction relief was denied. (See PC-2015-74; Mandate and Order dated March 27, 2015.) His 6th Post-Conviction request was denied by the trial and appellate courts. Over the years, there have been other various pleadings and Writs of Mandamus filed with the Court.

7. **IS THERE A GENUINE ISSUE OF MATERIAL FACT?** No
8. **IS AN EVIDENTIARY HEARING NECESSARY?** No
9. **IS THE TESTIMONY OF THE TRIAL JUDGE MATERIAL TO SUCH A HEARING?** No
10. **MATERIAL CONSIDERED BY THE REVIEWING COURT:**
 - A. Complaint and Information filed March 9, 1990.
 - B. Court Clerk Minutes of jury trial conducted October 29, 1990, thru October 31, 1990.
 - C. Judgment and Sentence Count I filed December 3, 1990.
 - D. Judgment and Sentence Count II filed December 3, 1990.
 - E. Judgment and Sentence Count III filed December 3, 1990
 - F. Court of Criminal Appeals Opinion, Cause No. F-90-1297, dated November 14, 1994, reversing and remanding the matter for new trial.
 - G. Amended Information filed April 25, 1995.
 - H. Court Clerk Minutes of jury trial conducted April 23, 1998, thru April 30th, 1998. Defendant found guilty on Count I and II, and punishment of death and 10 years,

respectively.

- I. Court Clerk Minute of June 3, 1998, regarding formal sentencing.
- J. Judgment and Sentence filed on June 4, 1998, finding guilty on Count I and Count II.
- K. Opinion of Court of Criminal Appeals, Cause No. F-98-693, issued on January 24, 2001, affirming the conviction on Count I but reversing the conviction on Count II and remanding for new trial.
- L. Mandate issued March 21, 2001.
- M. Motion and Dismissal of Count Two, Feloniously Carrying a Firearm filed April 3, 2001.
- N. Court of Criminal Appeals Order denying Post-Conviction Relief, Cause No. PCD-2000-285, dated August 30, 2001.
- O. Court of Criminal Appeals Order, dated November 19, 2002, Granting Motion for Evidentiary Hearing on Proposition One of Second Application For Post-Conviction Relief, Cause No. PCD-2002-983 on the issue of mental retardation.
- P. Order Denying Post-Conviction Relief on Proposition Two; Order Granting Post-Conviction Relief on Proposition One and Remanding to the District Court of Creek County for a Jury Determination on the issue of Mental Retardation, Court of Criminal Appeals, Cause No. PCD-2002-983 issued July 23, 2003.
- Q. Court of Criminal Appeals Opinion dated December 7, 2005, Cause No. PCD-2002-983, reversing jury verdict of no mental retardation, vacating the death sentence, and modifying to life imprisonment without the possibility of parole.
- R. Mandate issued December 7, 2005, regarding the Court of Criminal Appeals

decision of same date.

- S. Application for Post-Conviction Relief filed November 6, 2013.
- T. Trial Court Order of June 18, 2014, denying Third Application for Post-Conviction Relief.
- U. Application for Post-Conviction Relief filed March 31, 2014. [Defendant's 4th such Application.]
- V. Trial Court Order of July 3, 2014, denying the Fourth Application for Post-Conviction Relief.
- W. Court of Criminal Appeals Order declining jurisdiction dated December 18, 2014, matter number PC-2014-733.
- X. Petitioner's 5th Application for Post-Conviction Relief filed September 29, 2014.
- Y. Trial Court's denial filed January 14, 2015.
- Z. Court of Criminal Appeals Order, PC-2015-74, dated March 27, 2015, affirming the trial court.
- AA. Court of Criminal Appeals Mandate, PC-15-74 dated March 27, 2015.
- BB. Petitioner's 6th Application for Post-Conviction Relief filed January 17, 2017.
- CC. Petitioner's 7th Application for Post-Conviction Relief filed June 4, 2021.
- DD. State's Response filed October 22, 2021.
- EE. Court File.

11. FINDINGS OF FACT:

Petitioner is no stranger to Post-Conviction proceedings. With the assistance of counsel, the original conviction was appealed and reversed. Upon re-trial, with different counsel, he was

convicted a second time, after more appeals, with the assistance of counsel he was granted a jury trial on the issue of mental retardation. Again, with the assistance of counsel he successfully had that verdict reversed and his sentence of death was modified to life without the possibility of parole. He originally was charged with 3 felony counts, but after all appeals, only his murder conviction remains.

Petitioner's Third Application for Post-Conviction Relief contained a request for DNA testing pursuant to 22 O.S. § 1373.7, but it lacked any reasons why such testing should be done. It was denied by the District Court.

Petitioner's Fourth Application for Post-Conviction Relief again cites 22 O.S. §1373.7 and had an attached a notarized Affidavit in support of his Application. Once again, he did not address why he should be entitled to such testing but appears to only assume that because it is an Oklahoma Statute that such testing must be done upon request. That request was denied by the Trial Court. Petitioner's Appeal was dismissed because it was not timely filed. Instead of attempting to show why he failed to timely appeal, he simply filed a new Application for Post-Conviction Relief (his 5th such application). Once again Petitioner seeks DNA testing and his attached Affidavit, as before, states he knows who committed the shooting, but declines to name the individual. The trial court's denial of the 5th Application was appealed by the Petitioner. The decision of the trial court was affirmed by Court of Criminal Appeals Order dated March 27, 2015. [See PC-2015-74]

A critical fact in past requests was that Petitioner stated he knew who committed the crime, since he was in the car with the actual perpetrator, BUT he refuses to identify such other person. If Petitioner is attempting to establish an alibi, he has not demonstrated why such information was not utilized in any of his multiple trials. This was not newly discovered

evidence but evidence that, by Petitioner's own admission, was available to the Petitioner at all times and has never been asserted until now. Additionally, Petitioner failed to timely appeal the denial of his previous DNA request.

In his 6th Application, Petitioner contends he has been denied counsel in the previous request and that he is entitled to DNA testing. A review of the records discloses that Petitioner has been represented in many stages of his case, but he is correct that during the Applications for Post-Conviction Relief, no attorney appearances are noted. During trial and direct appeal of trial proceedings, assistance of counsel has been present. These claims were denied.

Petitioner has now filed his 7th Post-Conviction Relief request asserting the State Courts lack jurisdiction, i.e. McGirt because of his Native American heritage. However, Petitioner does not cite any authority for his claim of Native American heritage.

12. CONCLUSIONS OF LAW:

Post-conviction claims that could have been raised in previous appeals but were not are generally waived. Claims previously raised on direct appeal are res judicata. *Slaughter v. State*, 2005 OK CR 2, *McCarty v. State*, 1999 OK CR 24, *Rojem v. State*, 1992 OK CR 20. The Post-Conviction Procedure Act was neither designed nor intended to provide applicants another appeal. *Slaughter*, *supra*, *Walker v. State*, 1997 OK CR 3, *cert. denied* 521 U.S. 1125, *Mayes v. State*, 1996 OK CR 28. Post-conviction relief may be based on the discovery of "material facts, not previously presented and heard, that require vacation of the conviction or sentence in the interest of justice." These facts must have been undiscoverable for trial or original appeal despite the exercise of due diligence. *Romano v. State*, 1996 OK CR 20.

Petitioner complains that his constitutional rights were violated and that his arrest,

prosecution, conviction, and sentencing were illegal. It is well-settled law that a request for post-conviction relief is not an appeal. The jurisdictional grounds for relief requested pursuant to an Application for Post-Conviction Relief are found in 22 O.S. § 1080.

The standard for a Second Application for Post-Conviction Relief is found in 22 O.S. § 1086. Section 1086 limits the relief available on subsequent petitions to only "those grounds which for sufficient reason[s] were not asserted or [were] inadequately raised." New claims that should have or could have been brought at some previous point may not be brought unless the defendant shows adequate grounds to excuse the delay. *Johnson v. State*, 1991 OK CR 124.

Petitioner's complaints are barred because of waiver or res judicata. Furthermore, there is no need for an evidentiary hearing to determine his Native American status as the State's Response to the Petitioner's Application contains Exhibits 1-A and 1-B which establish that the Petitioner is not a member of the Muscogee or Cherokee Nations and clearly refute the claims of the Petitioner. Petitioner's claims of Native American Heritage are false.

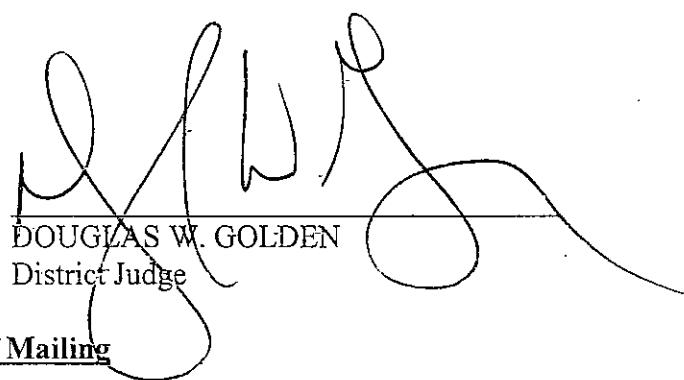
The court finds the arguments contained in the State's Response to be compelling and dispositive of Petitioner's claim. Additionally, the court would adopt the reasoning of the Oklahoma Criminal Court of Appeals contained in the recent decision of *Ryder v. State*, 21 OK CR 36.

13. ORDER:

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

**NOTICE TO DEFENDANT: YOU MAY APPEAL THIS ORDER BY
FILING A PETITION IN THE COURT OF CRIMINAL APPEALS WITHIN
THIRTY DAYS FROM THIS DATE.**

Dated this 3rd day of November, 2021..


DOUGLAS W. GOLDEN
District Judge

Certificate of Mailing

On the 3rd day of November, 2021 a certified copy of the above and foregoing Post-Conviction Finding was mailed, postage prepaid, to:

Darrin Lynn Pickens, #142619 – 129 Conner Rd., Hominy, OK 74035
Creek County District Attorney – 222 E. Dewey, Sapulpa, OK 74066
Clerk of the Court of Criminal Appeals – Oklahoma Judicial Center, 2100 N. Lincoln Blvd.,
Suite 4, Oklahoma City, OK 73105


Laura Bower
Secretary/Bailiff

I, Amanda VanOrsdel, Court Clerk for Creek County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the Court Clerks office of Creek County, Oklahoma, This

3rd day of November 2021
By A. Orsdel A. Orsdel Amanda VanOrsdel
Deputy Court Clerk