

APPENDIX

A

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

SEP 28 2021

JOHN P. HIGLEY,)
Petitioner,)
v.)
THE STATE OF OKLAHOMA,)
Respondent.)
No. PC-2021-663

ORDER AFFIRMING DENIAL OF
REQUEST FOR APPEAL OUT OF TIME

The Petitioner has appealed to this Court from a May 20, 2021, order of the District Court of Delaware County denying his request for a recommendation of an appeal out of time in Case No. CF-2017-371. On July 8, 2019, Petitioner entered a blind plea of guilty to Lewd Molestation of a Child Under the Age of Twelve and was sentenced to twenty-five years imprisonment, with all but the first twenty years suspended. Petitioner did not move to withdraw his plea or otherwise appeal his conviction.

Petitioner has failed to establish he is entitled to any relief in this post-conviction proceeding. Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their convictions and sentences. *Logan v. State*, 2013 OK

CR 2, ¶ 3, 293 P.3d 969, 972; 22 O.S.2011, § 1086. Issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review. *Id.*

In this matter, Petitioner appeals from the trial court's denial of his request for a trial court recommendation that this Court grant Petitioner a certiorari appeal out of time. He maintains the trial court erred when it found Petitioner was not denied the right to appeal through no fault of his own.

To support his request for an appeal out of time, Petitioner must establish that he was denied an appeal through no fault of his own. Rule 2.1(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021); *see Blades v. State*, 2005 OK CR 1, 107 P.3d 607; *see also Smith v. State*, 1980 OK CR 43, 611 P.2d 276. Petitioner bases his request on a claim of ineffective assistance of plea counsel. Petitioner has not established that his counsel's conduct was objectively unreasonable, or that the outcome of his plea proceedings was unreliable or fundamentally unfair. *Logan*, 2013 OK CR 2, ¶ 5, 293 P.3d at 973 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Petitioner has not established a decision to overturn his plea proceedings would be rational under the circumstances.

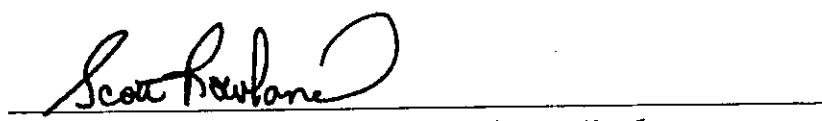
In the order filed May 20, 2021, the Honorable Dave Crutchfield, Associate District Judge, denied Petitioner's request for a trial court recommendation of a certiorari appeal out of time. The trial court did not find any support for Petitioner's claim he was denied an appeal through no fault of his own. We agree.

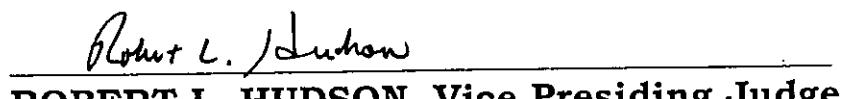
Petitioner's petition to this Court and the record fail to establish Petitioner was denied an appeal through no fault of his own. *Dixon v. State*, 2010 OK CR 3, ¶ 5, 228 P.3d 531, 532. Therefore, Petitioner's petition seeking a certiorari appeal out of time is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), 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

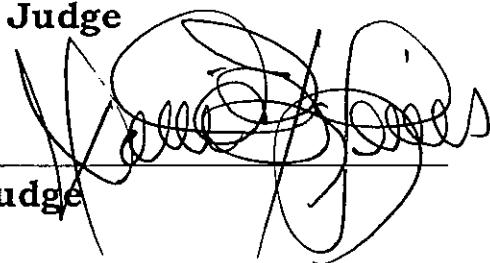
28th day of September, 2021.


SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge

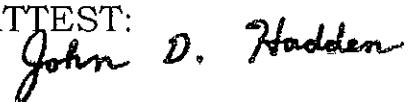


GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

APPENDIX

B

FILED

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY MAY 20 2021
STATE OF OKLAHOMA

JOHN P. HIGLEY,) CAROLINE M. WEAVER
) DELAWARE CO. COURT CLERK
Petitioner,)
)
v.) Case No. CF-2017-371
)
THE STATE OF OKLAHOMA,)
)
Defendant.)

ORDER DENYING POST CONVICTION RELIEF

Now on this 20 day of May, 2021, there came on for consideration, the Petitioner's APPLICATION FOR POST CONVICTION RELIEF. After review of the Application and the State's Response thereto, the court finds as follows:

1. When the Petitioner informed the court that he wished to waive jury trial and proceed to trial before the bench, the court went over his right to trial by jury and reminded him that by making this choice, he would be giving up that right.

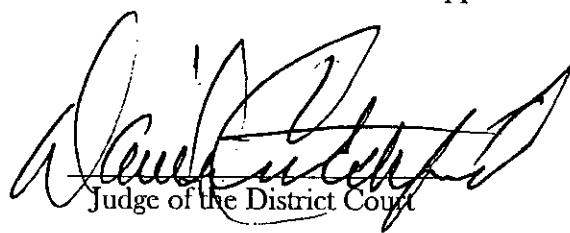
2. The matter proceeded to bench trial as noted in the Application and Response. After the State put on all its witnesses, including in-court testimony by the twelve-year old victim, the Petitioner informed the court that he wanted to enter a blind plea. The court explained to the Petitioner that by doing this, he would give up his right to put on evidence of his own, including his right to testify on his own behalf. The Petitioner was made well aware of his rights to continue to trial and that he was facing a sentence with a minimum of twenty-five years and he would be

required to serve at least eighty-five percent of the sentence. The Petitioner chose to stop the trial and enter a blind plea.

3. At the plea hearing, the court found that there was sufficient evidence to accept his plea of guilt based upon the testimony of the OHP Trooper who had conversations with the Petitioner, after administering a polygraph, and the twelve-year old victim. The victim's testimony was especially compelling because, even though the abuse happened when she was nine and ten years old and during trial she was only about age twelve, she was able to sit at the witness stand, not more than fifteen or twenty feet directly in front of the accused, and describe in detail, the heinous acts perpetrated upon her. She never flinched or retracted or equivocated; she completely stood by her testimony on cross-examination

4. The minimum sentence for lewd molestation of a child under the age of twelve, is twenty-five years. The court sentenced the Petitioner to twenty-five years with all but the first twenty suspended. The victim described multiple acts of abuse, spanning several months, some of which could have been rape by instrumentation. The State chose to charge the Petitioner with one act, which was corroborated by the Trooper and his conversation with the Petitioner. As a result of the abuse, the victim's family was destroyed. Her mother lost custody of the victim and her older brother for three years, and ultimately gave up her parental rights to the victim. The victim and her brother have been separated. He chose to go back to their mother and the victim chose to be adopted by her foster family. At sentencing, the Petitioner showed little remorse for the damage to his victim. He showed a great deal of remorse for being caught and prosecuted but appeared to at last, face the consequences of his actions and certainly, never indicated to the court that he intended to appeal.

For the above reasons, the court denies the Petitioner's Application for Post Conviction
Relief.



Judge of the District Court

Caroline M. Weaver, Court Clerk of Delaware County
Oklahoma, hereby certify that the foregoing is a true,
correct and full copy of the instrument herewith set
out as appears of record in the Court Clerk's office of
Delaware County Oklahoma. This 20 day of
May 20 21 By
Caroline M. Weaver
Deputy Kimberly S. P. Court Clerk

APPENDIX

C

FILED

MAY 17 2021

CAROLINE M. WEAVER
DELAWARE CO. COURT CLERK

IN THE DISTRICT COURT OF DELAWARE COUNTY
STATE OF OKLAHOMA

JOHN P. HIGLEY,)
Petitioner,)
)
vs.) CF-2017-371
)
THE STATE OF OKLAHOMA)
Respondent.)

**STATE'S RESPONSE TO PETITIONER'S APPLICATION FOR
POST CONVICTION RELIEF**

COMES NOW the State of Oklahoma, by and through, Nicholas P. Lelecas, Assistant District Attorney for Delaware County, State of Oklahoma and for its response to Petitioner's Application, states and alleges as follows:

- 1) Petitioner was charged on December 7, 2017 with one (1) count of Lewd Molestation of a child under the age of twelve (12).
- 2) On or about July 1, 2019 the Petitioner appeared with his attorney and the court began a non-jury trial in this case.
- 3) During the course of the non-jury trial, the Petitioner decided to enter a "blind plea."
- 4) On or about July 8, 2019, the Petitioner appeared before the court with his attorney and entered a plea of nolo contendre to the charge. Upon acceptance of the plea of nolo contendre, the court found the Petitioner guilty as charged, ordered a pre-sentence investigation, and schedule the matter for sentencing on August 29, 2019.
- 5) On August 29, 2019, the Petitioner appeared before the court with his attorney at which time the court sentenced the Petitioner, in-part, to a term of twenty-five (25) years in the care and custody of the Oklahoma Department of Corrections with all but the first 20 years suspended.

- 6) On March 29, 2021, the Delaware County Court Clerk received a filed Petitioner's Application for Post-Conviction Relief seeking an order recommending an appeal out of time. It should be noted that the District Attorney's Office received a copy of the application on May 11, 2021.
- 7) A review of the court file reveals, prior to the filing of the current application, no attempts by the Petitioner to withdraw his plea of nolo contendre or appeal the sentence imposed by the court.

Post-conviction Relief

All issues in Petitioner's Application could been raised or should have been raised on direct appeal. The Oklahoma Court of Criminal Appeals, in *Hale v. State*, 1991 OK CR 27, 807 P.2d 264, holds a Post-Conviction Petitioner is barred from asserting any claims which had been or could have been raised previously in a direct appeal. Similarly, in *Jones v. State*, 1985 OK CR 99, 704 P.2d 1138, the Court of Criminal Appeals holds that where petitioner raised eight assignments of error which were never asserted on direct appeal, and where petitioner gave no explanation for bypass of his right to appeal and record did not reflect one, those assignments of error were properly rejected by trial court in denying petitioner's post-conviction relief. For these reasons, Petitioner's Application should be denied by the Court.

WHEREFORE, premises considered, the State of Oklahoma prays this Court deny Petitioner's Application on all grounds.

KENNY WRIGHT
District Attorney

By: 
Nicholas P. Lelecas, OBA #17886
Assistant District Attorney
13th District Delaware County
P.O. Box 528
Jay, Oklahoma 74346
(918) 253-4217; facsimile, (918) 253-4183

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that on the 17 day of May, 2021, a true and correct copy of the above and foregoing was deposited in the U.S. mail at Jay, Oklahoma with proper postage affixed thereto and addressed to:

John Higley, DOC#841690
LCC Unit 5-G1-H
P.O. Box 260
Lexington, Oklahoma 73051

