Appendix A

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

MARC ANTHONY SANDERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. PC-2021-1152**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, *pro se*, appeals the denial of post-conviction relief by the District Court of Tulsa County in Case No. CF-1997-2918.[1] Before the District Court, Petitioner asserted he was entitled to relief pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied*, 595 U.S. ___, No. 21-467 (Jan. 10, 2022), this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and does not void final state convictions. *See Matloff*, 2021 OK CR 21, ¶¶ 27-28, 40.

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[1] Petitioner's request to file a brief in excess of thirty (30) pages established by Rule 5.2(C)(3) *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021) is granted. The Clerk of this Court is order to accept for filing Petitioner's Brief in Support of Petitioner in Error tendered for filing on December 8, 2021.

The conviction in this matter was final before the July 9, 2020 decision in *McGirt*, and the United States Supreme Court's holding in *McGirt* does not apply. Therefore, the District Court's order denying post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), 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 16th day of February, 2022.

Scott Rowland
SCOTT ROWLAND, Presiding Judge

Robert L. Hudson
ROBERT L. HUDSON, Vice Presiding Judge

GARY L. LUMPKIN, Judge

DAVID B. LEWIS, Judge

ATTEST:

John D. Haddan
Clerk

PA

Appendix B

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MARC ANTHONY SANDERS,	)	
	)	
Petitioner,	)	
vs.	)	**CF-1997-2918**
	)	
STATE OF OKLAHOMA,	)	**Judge Moody**
	)	
Respondent.	)	

ORDER DENYING PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF

This matter came on for consideration on 9-15, 2021 pursuant to the Application for Post-Conviction Relief ("Application") filed by Petitioner Marc Anthony Sanders ("Petitioner") on July 16, 2021. The State filed its Response on September 15, 2021.

STATEMENT OF THE CASE

On June 18, 1998, a jury found Petitioner guilty of Robbery with a Dangerous Weapon-After Former Conviction of Felony (Count 1), Kidnapping-After Former Conviction of Felony (Count 2), Sexual Battery-After Former Conviction of Felony (Count 3), Procuring Lewd Exhibition-After Former Conviction of Felony (Count 4), First Degree Rape-After Former Conviction of Felony (Count 5), Rape by Instrumentation-After Former Conviction of Felony (Count 6), Forcible Sodomy- After Former Conviction of Felony (Count 8), Unlawful Possession of Marijuana-Misdemeanor (Count 9) in Tulsa County District Court Case CF-1997-2918. On June 30, 1998, the District Court sentenced Petitioner to 4,000 years in the Department of Correction ("DOC") on each of Counts 1-6 with all of these sentences to run consecutive to each other. Petitioner appealed this judgment and sentence to the Oklahoma Court of Criminal Appeals ("OCCA") in Case F-1998-784. Petitioner indicated he did not raise his present "Indian" jurisdictional argument in his direct appeal. *See* Application at pp. 3, 12. On September 21, 1999,

the OCCA issued an order affirming and modifying Petitioner's judgment and sentence to sentences of life imprisonment on all Counts except his sentence in Count 10 which would remain one year. All of these Counts were still ordered to run consecutively.

Petitioner filed his first Application for Post-Conviction Relief on November 20, 2000. The State incorporates by reference Petitioner's discussion of the propositions of error he raised in this application. *See* Application at p. 6. The District Court denied Petitioners first application on November 21, 2001. Petitioner appealed this denial to the OCCA in Case PC-2002-153. The OCCA affirmed the District Court's denial of relief.

In his second and current Application, Petitioner claims based on *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L. Ed. 2d 985 (2020) the Tulsa County District Court lacked jurisdiction to try him because he is "an Indigenous Freedman"," and the offense occurred within "Indian Country." Application at pp. 7, 9, 11.

FINDINGS OF FACTS

1. A representative of the Tulsa Police Department would testify that Petitioner committed the offenses he was convicted of within Tulsa County.
2. A representative of the Muscogee Creek Nation or a representative of the Cherokee Nation, or an expert witness testifying on Petitioner's behalf, would testify that the location of the offense Petitioner was convicted of in the above case –occurred within the Muscogee Creek Nation and/or the Cherokee Nation.

[redacted] Appendix B

CONCLUSIONS OF LAW

I. PETITIONER HAS FAILED TO SUSTAIN HIS ALLEGATIONS THAT HE IS AN "INDIAN" FOR PURPOSES OF INVOKING AN EXCEPTION TO STATE JURISDICTION.

The prosecution of Petitioner's offenses was a justiciable matter, and Petitioner has not established that the trial court lacked jurisdiction. *See,* Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma). In *Russell v. Cherokee Cty. Dist. Court,* 1968 OK CR 45, 438 P.2d 293, 294, the Court stated:

> It is fundamental that where a petition for writ of habeas corpus, or for post-conviction appeal is filed, the burden is upon the Petitioner to sustain the allegations of his petition, and that every presumption favors the regularity of the proceedings had in the trial court. Error must affirmatively appear, and is never presumed.

Related to his burden to sustain his allegations that he is an Indian for purposes of invoking an exception to state jurisdiction, the Petitioner has not presented this Court with any affirmative evidence that he has any significant degree of Indian blood and that he is recognized as an Indian by the federal government or by some tribe or society of Indians. *See Goforth v. State,* 1982 OK CR 48, 644 P.2d 114 (Two elements must be satisfied before it can be found that appellant is an Indian under federal law. Initially, it must appear that he has a significant percentage of Indian blood. Secondly, the appellant must be recognized as an Indian either by the federal government or by some tribe or society of Indians.)

In his Application, Petitioner claimed he is an "Indigenous Freedman" and the descendent of "Five Civilized Tribes Freedman." Application at pp. 9, 11. Petitioner may be attempting to claim he has Indian blood when he discusses his theories that "Africans are the aboriginal population of the United States" and that the descendants of these original inhabitants are a genetic mix of Native American, African, and European ancestry. Application at pp. 9, 16. However, he provides no affirmative support for any of his self-serving claims that he has "Native American" blood. Further,

Petitioner admits he is not an enrolled member of a tribe and he never claims affiliation with any particular tribe. Instead, Petitioner repeatedly mentions his alleged ancestral ties to the "Five Civilized Tribes." Application at pp. 11, 19-20. Therefore, since he provides no support for his theory/allegations that he possesses Indian blood and does not even claim to be recognized by any particular Indian tribe, Petitioner has not met his burden to show he meets the definition of "Indian." *See Russell*, 438 P.2d at 294. Accordingly, the Court hereby denies his Application on this basis.

II. *MCGIRT* SHOULD NOT BE APPLIED RETROACTIVELY TO VOID A CONVICTION THAT WAS FINAL AT THE TIME *MCGIRT* WAS DECIDED.

A. Application of Retroactivity Principles to Indian Country Claims

United States v. Cuch, 79 F.3d 987 (10th Cir. 1996) is the most relevant decision to the specific issue, presented by this case, of the proper forum for prosecution after the issuance of a new decision, regarding disestablishment or diminishment of an Indian reservation. In *Cuch,* the Tenth Circuit considered the question of whether it should retroactively apply the Supreme Court's decision in *Hagen v. Utah,* 510 U.S. 399 (1994), that a reservation's boundaries had been diminished, to vacate convictions that were made final prior to that decision. *See Cuch,* 79 F.3d at 989-90. The Tenth Circuit started by noting "[t]he Supreme Court can and does limit the retroactive application of subject matter jurisdiction rulings," citing the Court's decision in *Gosa v. Mayden,* 413 U.S. 665 (1973). *Cuch* 79 F.3d. at 990. The *Cuch* court recounted the principles that underlie retroactivity analysis: "finality and fundamental fairness." *Cuch,* 79 F.3d at 991. "A subset of the principle of finality is the prospect that the invalidation of a final conviction could well mean that the guilty

will go unpunished due to the impracticability of charging and retrying the defendant after a long interval of time." *Id.*

The *Cuch* court also considered that the issue of fairness to petitioners did not support retroactivity: 'There is no question of guilt or innocence here" and these cases "involved conduct made criminal by both state and federal law." *Id.* at 992. The petitioners do not "assert any unfairness in the procedures by which they were charged, convicted, and sentenced" and the Supreme Court's recent reservation boundaries decision does not "bring[] into question the truth finding functions of the ... courts that prosecuted Indians for acts committed within the historic boundaries of the ... Reservation." *Id.* Similarly, *Cuch* distinguished cases where courts retroactively applied decisions holding the crime at issue could not be constitutionally punished by any court or where the acts committed were not actually criminalized by the statute of conviction. *Id.* at 993-94. There is not "complete miscarriage of justice to these movants that would mandate or counsel retroactive application of *Hagen* to invalidate these convictions." *Id.* at 994 (internal marks omitted). Rather, the question solely "focuses on *where* these Indian defendants should have been tried for committing major crimes." *Id.* at 992. As a result, the court found "the circumstances surrounding these cases make prospective application of *Hagen* unquestionably appropriate in the present context." *Id.* at 994.

Cuch also rejected the argument that a decision on reservation boundaries "did not effect a 'change' in federal law, but merely clarified what had been the law all along." *Id.* The *Cuch* court dismissed "the Blackstonian common law view that courts do no more than discover the law,"

noting that in *Linkletter v. Walker*, 381 U.S. 618 (1965), the Supreme Court recognized under American law "such a rule was out of tune with actuality." *Id.* at 994-95. In other words, "the Supreme Court admitted that '[t]he past cannot always be erased by a new judicial declaration.'" *Id* at 995 (quoting *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940)). "While the jurisdictional nature of a holding makes the retroactivity question more critical, the nature of the case alone does not dispense with the duty to decide whether the Court may in the interest of justice make the rule prospective where the exigencies of the situation require such application." *Cuch*, 79 F.3d at 995. (citations and internal marks omitted). Instead, "the rule of law is strengthened when courts, in their search for fairness, giving proper consideration to the facts and applicable precedent, allow the law to be an instrument in obtaining a result that promotes order, justice and equity." *Id.* (citation and internal marks omitted).

B. *McGirt* Shall Not Apply Retroactively to Void a Final State Conviction

In *State ex rel, District Attorney v. Wallace*, 2021 OK CR 21, __P.3d__, 2021 WL 3578089, the Oklahoma Court of Criminal Appeals ("OCCA") recently stated that it found persuasive the analysis and authorities provided by the United States Court of Appeals for the Tenth Circuit in *Cuch*, in considering the "independent state law question of collateral non-retroactivity for *McGirt*."[1] *Id.* at ¶ 26. The OCCA also explained that new rules of criminal procedure "generally do not apply retroactively to convictions that are final, with a few narrow exceptions." *Id.* at ¶ 8 (emphasis in original).

[1] *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

Related to its analysis of the *McGirt* decision under these principles, the *Wallace* court first determined that the holding in *McGirt* only imposed procedural changes and was "clearly a procedural ruling." *Id* at ¶ 27. Second, the *Wallace* court held that the "procedural rule announced in *McGirt* was new." *Id.* at ¶ 28. Third, the court explained in detail in *Wallace* that the OCCA's "independent exercise of authority to impose remedial constraints under state law on the collateral impact of *McGirt* and post-*McGirt* litigation is consistent with both the text of the opinion and the Supreme Court's apparent intent." *Id* at ¶ 33. Ultimately, the OCCA held that "*McGirt* and our post-*McGirt* reservation rulings shall not apply retroactively to void a final state conviction,. . ."[2] *Id.* at ¶¶ 6, 40.

As discussed above, the Tulsa County District Court found Petitioner guilty on June 30, 1998 and sentenced him accordingly. Petitioner appealed this judgment and sentence to the OCCA. The OCCA affirmed the District Court's judgment and sentence on September 21, 1999. Since Respondent did not file a petition for a writ of certiorari with the United States Supreme Court within the ninety-day time limit following this decision, his conviction became final on December 20, 1999. *See* U.S. Sup. Ct. Rule 13, 28 U.S.C.A.

Since Petitioner's conviction was final long prior to the July 9, 2020 decision in *McGirt*, this Court should hold that the *McGirt* decision does not apply retroactively in Petitioner's state post-conviction proceeding to void his final conviction. *See Wallace,* 2021 OK CR 21, at ¶¶ 6, 40. Accordingly, the Court also denies Petitioner's Application on this basis.

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[2] *Teague v. Lane,* 489 U.S. 288, 295 (1989) defines "a final conviction as one where judgment was rendered, the availability of appeal exhausted, and the time to petition for certiorari had elapsed)." *Wallace,* 2021 OK 21, at ¶ 2, n.1.

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III. PETITIONER'S CLAIM IS BARRED BY 22 O.S. § 1086

In deciding *McGirt*, supra, the Supreme Court expressly invited Oklahoma courts to apply procedural bars to the jurisdictional challenges that would proliferate in the wake of its decision:

> Other defendants [aside from those who choose not to seek relief] who do try to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on postconviction review in criminal proceedings.[1]
>
> [1] For example, Oklahoma appears to apply a general rule that "issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." *Logan v. State*, 2013 OKCR 2, ¶ 1, 293 P.3d 969, 973. . . .

McGirt, 140 S. Ct. at 2479.

It is axiomatic that Oklahoma law limits the grounds for relief that may be raised in a post-conviction application to those that were not, and could not have been, raised on direct appeal. 22 O.S.2011, § 1086; *see, e.g.*, *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973; *Woodruff v. State*, 1996 OK CR 5, ¶ 2, 910 P.2d 348, 350; *Berget v. State*, 1995 OK CR 66, ¶ 3, 907 P.2d 1078, 1080-81. Section 1086 of Title 22 states:

> All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceedings the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court founds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.

Petitioner's allegation that Oklahoma jurisdiction was preempted by federal law should have been appealed. The Petitioner did not raise this claim as a proposition for relief on appeal, and is therefore barred by § 1086. *See* Application at pp. 3, 12-13. The OCCA has held that it will not review claims "that could have or should have been brought at some previous point in time

without proof of adequate grounds to excuse the delay." *Id.*, 1991 OK CR 124, ¶ 8, 823 P.2d at 373; *see also Carter v. State*, 1997 OK CR 22, ¶ 2, 936 P.2d 342, 344 ("The application of the act is limited to only those claims which, for whatever reason, could not have been raised on direct appeal.").

The Post-Conviction Procedure Act explicitly contemplates challenges to subject-matter jurisdiction. 22 O.S. 2011, § 1080(b). Yet, section 1086 provides that, "**All** grounds for relief available to an applicant under this act **must** be raised in his original supplemental or amended application. . . . or in any other proceeding the applicant has taken to secure relief [such as direct appeal]" without exception for jurisdictional claims. 22 O.S.2011, § 1086 (emphasis added). Petitioner and this Court are bound by the plain language of the statute. Therefore, since Petitioner failed to raise this jurisdictional claim on direct appeal, the Court finds this claim is waived and, thus, procedurally barred.

IV. PETITIONER'S CLAIM THAT THIS COURT LACKED SUBJECT MATTER JURISDICTION SHOULD BE BARRED BASED ON THE DOCTRINE OF LACHES

The Oklahoma Court of Criminal Appeals has long held that, pursuant to the laches doctrine, "one cannot sit by and wait until lapse of time handicaps or makes impossible the determination of the truth of a matter, before asserting his rights." *Thomas v. State*, 1995 OK CR 47, ¶ 11, 903 P.2d 328, 331 (quotation marks omitted, alteration adopted) (collecting cases); *see also Berry v. Anderson*, 1972 OK CR 192, ¶ 4, 499 P.2d 959, 960 (barring claim based on laches even where it was "apparent" that the petitioner "would have been entitled to release" had he earlier brought his challenge); *Application of Smith*, 1959 OK CR 59, ¶ 10, 339 P.2d 796, 797-98 ("The right to relief . . . may be lost by laches, when the petition for habeas corpus is delayed for a period of time so long that the minds of the trial judge and court attendants become clouded by

time and uncertainty as to what happened, or due to dislocation of witnesses, the grim hand of death and the loss of records the rights sought to be asserted have become mere matters of speculation, based upon faulty recollections, or figments of imagination, if not outright falsifications.").

The laches doctrine applies to collateral attacks upon convictions, including by means of an application for post-conviction relief. *Thomas*, 1995 OK CR 47, ¶ 15, 903 P.2d at 332; *see also Paxton v. State*, 1995 OK CR 46, ¶ 8 903 P.2d 325, 327 ("We hold, therefore, that the doctrine of laches has been and continues to be applicable, in appropriate cases, to collateral attacks upon convictions, whether by means of an extraordinary writ, as in former times, or by means of an application for post-conviction relief."). "Thus, the doctrine of laches may prohibit the consideration of an application for post-conviction relief where a petitioner has forfeited that right through his own inaction." *Paxton*, 1995 OK CR 46, ¶ 8, 903 P.2d at 327.

The OCCA has "emphasize[d] that the applicability of the doctrine of laches necessarily turns on the facts of each particular case." *Id.* The question is whether the post-conviction applicant has provided "sufficient reason" for the delay in seeking post-conviction relief. *See id.*, 1995 OK CR 47, ¶ 16, 903 P.2d at 332 (holding that "Petitioner's contention that depression caused by incarceration for subsequent convictions have prevented him from seeking relief . . . for fifteen years is not sufficient reason to overcome the doctrine of laches"). Finally, the OCCA has refused to place a threshold burden upon the State to demonstrate actual prejudice before laches applies. *Id.*, 1995 OK CR 47, ¶ 14, 903 P.2d at 332.

Moreover, the *McGirt* Court, tacitly recognizing that its decision would open the floodgates to jurisdictional challenges, encouraged Oklahoma courts to consider applying laches to such challenges:

> Still, we do not disregard the dissent's concern for reliance interests. It only seems to us that the concern is misplaced. Many other legal doctrines—procedural bars, res judicata, statutes of repose, and laches, to name a few—are designed to protect those who have reasonably labored under a mistaken understanding of the law. And it is precisely because those doctrines exist that we are "fre[e] to say what we know to be true . . . today, while leaving questions about . . . reliance interest[s] for later proceedings crafted to account for them." *Ramos*, 590 U. S., at ——, 140 S.Ct., at 1047 (plurality opinion).
> *McGirt*, 140 S. Ct. at 2481.

Here, Petitioner committed these crimes in 1997. Yet, all of the facts underlying his jurisdictional claim—that is, his evidence that he is an "Indian" and his assertion that his offense was committed in Indian Country-were available to him at every prior stage of his criminal case, including at the time of the crimes, at trial, and at the time of his appeal. Indeed, the OCCA has on multiple occasions applied laches to jurisdictional claims. In *Ex parte Wallace*, 81 Okla. Crim. 176, 178-79, 162 P.2d 205, 207 (1945), the defendant filed a state habeas petition three years after his guilty plea alleging that the federal court had exclusive jurisdiction over his crime because he and his rape victims were Comanche Indians and the crime occurred on a restricted allotment. Although the OCCA did not invoke the word "laches," it ultimately concluded that "at this late date" it would not consider the defendant's jurisdictional attack, noting in particular that the statute of limitations for any federal action against the defendant had lapsed.[3] *Ex parte Wallace*, 81 Okla. Crim. at 179, 188, 162 P.2d at 207, 211.

Similarly, in *Allen v. Raines*, 1961 OK CR 41, ¶¶ 6-8, 360 P.2d 949, 951, the OCCA applied laches to a state habeas petitioner's claim that he was not furnished counsel at the time of his guilty plea sixteen years prior. Importantly, at the time, the OCCA treated the denial of counsel as a

[3] Laches does not require that there be no possibility of a retrial. In this case, it is patently unfair that Petitioner sat on a potentially meritorious jurisdictional challenge for *twenty-four* years.

jurisdictional issue. *See Allen*, 1961 OK CR 41, ¶ 6, 360 P.2d at 951 ("We have held that a trial court may lose jurisdiction to pronounce judgment by failure to complete the court by appointing counsel to represent the accused whose the accused has not effectively waived his constitutional right to the assistance of counsel."); *see also Application of Smith*, 1959 OK CR 59, ¶ ¶ 1, 10-14, 339 P.2d 796, 798-99 (barring based on laches jurisdictional claim of denial of counsel); *Ex parte Paul*, 93 Okla. Crim. 300, 301, 227 P.2d 422, 423 (1951) (same).[4] Petitioner has provided no reason whatsoever for his inaction, let alone "sufficient" reason. *Paxton*, 1995 OK CR 47, ¶ 16, 903 P.2d at 332. Again, this Court accepts the *McGirt* court's invitation to apply laches to belated jurisdictional claims.

Further, the State is not required to show prejudice from Petitioner's inaction for laches to apply. *Paxton*, 1995 OK CR 47, ¶ 14, 903 P.2d at 332. Given the State's legitimate reliance on the inaction of the Tribes and Petitioner himself (and that of the hundreds—if not thousands—of others inmates who will seek relief after *McGirt*), this Court should refuse to consider this belated jurisdictional challenge. *See City of Sherrill*, 544 U.S. at 216-17; *cf. also McGirt*, 140 S. Ct. at 2500 (Roberts, C.J., dissenting) ("[T]he Court's decision draws into question thousands of convictions obtained by the State for crimes involving Indian defendants or Indian victims across several decades.").

[4] This Court has on occasion not applied laches to delayed jurisdictional claims. *See, e.g., Ex parte Ray*, 87 Okla. Crim. 436, 441-44, 198 P.2d 756, 759-60 (1948) (considering on the merits claim of deprivation of counsel before denying based on laches delayed habeas petition); *Ex parte Motley*, 86 Okla. Crim. 401, 404-09, 193 P.2d 613, 615-17 (1948) (same). But this is not surprising, as laches is applied on a case-by-case basis: *See Paxton*, 1995 OK CR 46, ¶ 8, 903 P.2d at 327. The facts of this case warrant application of laches.

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At bottom, laches is an equitable doctrine. *See Sullivan v. Buckhorn Ranch P'ship*, 2005 OK 41, ¶ 32, 119 P.3d 192, 202 ("Laches is an equitable defense to stale claims. . . . Application of the doctrine is discretionary depending on the facts and circumstances of each case as justice requires."). Under these circumstances, the Court find it is grossly inequitable and unjust to reward Petitioner with consideration of his belated jurisdictional claim and find Petitioner's jurisdictional claim to be barred by laches.

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Petitioner's application for post-conviction relief is hereby **DENIED**.

SO ORDERED this 15 day of Sept, 2021.

DAWN MOODY
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING/DELIVERY

I certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was mailed to:

Marc Anthony Sanders
North Fork Correctional Center
1605 East Main
Sayre, OK 73662
Petitioner pro se

And I further certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was hand delivered to:

Marianna E. McKnight, Esq.
Assistant District Attorney
Tulsa County District Attorney's Office
800 County Courthouse
500 S. Denver Ave.
Tulsa, OK 74103

[redacted] Appendix B

DON NEWBERRY
TULSA COUNTY COURT CLERK

BY: _____
DEPUTY COURT CLERK

Appendix C.

13. Any other felony after former conviction of a felony.

The granting or refusal of bail after judgment of conviction in all other felony cases shall rest in the discretion of the court; however, if bail is allowed, the trial court shall state the reason therefor.

Added by Laws 1969, c. 182, § 2, emerg. eff. April 17, 1969. Amended by Laws 1981, c. 258, § 1; Laws 1987, c. 136, § 7, eff. Nov. 1, 1987; Laws 1988, c. 109, § 28, eff. Nov. 1, 1988; Laws 2001, c. 234, § 1, eff. Nov. 1, 2001.

NOTE: Laws 2001, c. 225, § 7 repealed by Laws 2002, c. 22, § 34, emerg. eff. March 8, 2002.

§22-1078. Amount of bond - Time to make appeal bond - Stay pending appeal - Additional bond.

When bail is allowed, the court shall fix the amount of the appeal bond and the time in which the bond shall be given in order to stay the execution of the judgment pending the filing of the appeal in the appellate court, and until such bond is made shall hold the defendant in custody. If the bond be given in the time fixed by the court, the execution of the judgment shall be stayed during the time fixed by law for the filing of the appeal in the appellate court. If the appeal is filed within the time provided by law, then the bond shall stay the execution of the sentence during the pendency of the appeal, subject to the power of the court to require a new or additional bond when the same is by the court deemed necessary. If the bond is not given within the time fixed, or if given and the appeal not be filed in the appellate court within the time provided by law, the judgment of the court shall immediately be carried into execution.

Laws 1969, c. 182, § 3, emerg. eff. April 17, 1969.

§22-1079. Denial of bail - Review by habeas corpus.

If bail on appeal be denied, or the amount fixed be excessive, the defendant shall be entitled to a review of the action of the trial court and its reasons for refusing bail, by habeas corpus proceedings before the appellate court, or if the court be not in session, then by some judge of said court.

Laws 1969, c. 182, § 4, emerg. eff. April 17, 1969.

§22-1080. Post-Conviction Procedure Act - Right to challenge conviction or sentence.

Any person who has been convicted of, or sentenced for, a crime and who claims:

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

(b) that the court was without jurisdiction to impose sentence;

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(c) that the sentence exceeds the maximum authorized by law;

(d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

Added by Laws 1970, c. 220, § 1, eff. July 1, 1970.

§22-1081. Commencement of proceeding.

A proceeding is commenced by filing a verified "application for post-conviction relief" with the clerk of the court imposing judgment if an appeal is not pending. When such a proceeding arises from the revocation of parole or conditional release, the proceeding shall be commenced by filing a verified "application for post-conviction relief" with the clerk of the district court in the county in which the parole or conditional release was revoked. 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. The Court of Criminal Appeals may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the district attorney.

Laws 1970, c. 220, § 2, eff. July 1, 1970.

§22-1082. Court costs and expenses of representation.

If the applicant is unable to pay court costs and expenses of representation, he shall include an affidavit to that effect with the application, which shall then be filed without costs. Counsel necessary in representation shall be made available to the applicant after filing the application on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims. If an attorney is appointed to represent such an applicant then the fees and expenses of such attorney shall be paid from the court fund.

Laws 1970, c. 220, § 3, eff. July 1, 1970.

Appendix C

§22-1083. Response by state - Disposition of application.

A. Within thirty (30) days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. When an applicant asserts a claim of ineffective assistance of counsel, the state shall have ninety (90) days after the docketing of the application to respond by answer or by motion. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application; or such records may be ordered by the court. The court may also allow depositions and affidavits for good cause shown.

B. When a court is satisfied, on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may order the application dismissed or grant leave to file an amended application. Disposition on the pleadings and record is not proper if there exists a material issue of fact. The judge assigned to the case should not dispose of it on the basis of information within his personal knowledge not made a part of the record.

C. The court may grant a motion by either party for summary disposition of the application when it appears from the response and pleadings that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. An order disposing of an application without a hearing shall state the court's findings and conclusions regarding the issues presented.
Added by Laws 1970, c. 220, § 4, eff. July 1, 1970. Amended by Laws 2014, c. 216, § 1, eff. Nov. 1, 2014.

§22-1084. Evidentiary hearing - Findings of fact and conclusions of law.

If the application cannot be disposed of on the pleadings and record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. A judge should not preside at such a hearing if his testimony is material. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.
Laws 1970, c. 220, § 5, eff. July 1, 1970.

§22-1085. Finding in favor of applicant.

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If the court finds in favor of the applicant, it shall vacate and set aside the judgment and sentence and discharge or resentence him, or grant a new trial, or correct or modify the judgment and sentence as may appear appropriate. The court shall enter any supplementary orders as to rearraignment, retrial, custody, bail, discharge, or other matters that may be necessary and proper.
Laws 1970, c. 220, § 6, eff. July 1, 1970.

§22-1086. Subsequent application.
All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.
Laws 1970, c. 220, § 7, eff. July 1, 1970.

§22-1087. Appeal to Court of Criminal Appeals.
A final judgment entered under this act 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 the 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.
Laws 1970, c. 220, § 8, eff. July 1, 1970.

§22-1088. Short title.
This act may be cited as the "Post-Conviction Procedure Act".
Laws 1970, c. 220, § 9.

§22-1088.1. Post-conviction relief applications - Reasonable inquiry - Sanctions.
A. By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion or other papers regarding an application for post-conviction relief an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
1. It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

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2. The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

B. If, after notice and a reasonable opportunity to respond, the Court of Criminal Appeals determines that this section has been violated, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that have violated this section. The Court of Criminal Appeals may adopt and publish rules to implement this section.

Added by Laws 1995, c. 256, § 3, eff. Nov. 1, 1995.

§22-1089. Capital cases - Post - conviction relief - Grounds for appeal.

A. The application for post-conviction relief of a defendant who is under the sentence of death in one or more counts and whose death sentence has been affirmed or is being reviewed by the Court of Criminal Appeals in accordance with the provisions of Section 701.13 of Title 21 of the Oklahoma Statutes shall be expedited as provided in this section. The provisions of this section also apply to noncapital sentences in a case in which the defendant has received one or more sentences of death.

B. The Oklahoma Indigent Defense System shall represent all indigent defendants in capital cases seeking post-conviction relief upon appointment by the appropriate district court after a hearing determining the indigency of any such defendant. When the Oklahoma Indigent Defense System or another attorney has been appointed to represent an indigent defendant in an application for post-conviction relief, the Clerk of the Court of Criminal Appeals shall include in its notice to the district court clerk, as required by Section 1054 of this title, that an additional certified copy of the appeal record is to be transmitted to the Oklahoma Indigent Defense System or the other attorney.

C. The only issues that may be raised in an application for post-conviction relief are those that:

1. Were not and could not have been raised in a direct appeal; and

2. Support a conclusion either that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

The applicant shall state in the application specific facts explaining as to each claim why it was not or could not have been raised in a direct appeal and how it supports a conclusion that the