

APPENDIX A

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OKLAHOMA COURT OF CRIMINAL APPEALS

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF
AND DENYING PETITION FOR APPEAL OUT OF TIME

CASE NUMBER : PC-2022-116

AND

CASE NUMBER : PC-2022-117

COMBINED BY THE O.C.C.A.

DOCKTED ON : 13 APRIL 2022

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

RONALD DEAN LOWE,) APR 13 2022
Petitioner,) JOHN D. HADDEN
v.) CLERK
STATE OF OKLAHOMA,) No. PC-2022-116
Respondent.) PC-2022-117

**ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF AND
DENYING PETITION FOR APPEAL OUT OF TIME**

Petitioner has appealed to this Court from a January 10, 2022, order denying post-conviction relief in Pottawatomie County District Court Case No. CRF-1993-392. In that case, Petitioner entered a plea of no contest to Perjury and was sentenced on April 14, 1994, to ten years imprisonment. The sentence was ordered to be served concurrently with Petitioner's sentences in Pottawatomie County District Court Case No. CRF-1993-311.¹ Petitioner did not timely move to withdraw his plea or otherwise appeal his conviction.

¹ In Case No. CRF-1993-311 Petitioner was convicted after a jury trial of two counts of First Degree Murder. He was sentenced to life imprisonment without parole on Count 1 and life imprisonment on Count 2.

With the exception of Petitioner's Indian Country claims and his request for an appeal out of time, we do not reach the merits of Petitioner's claims because the issues could have been raised in a direct appeal. 22 O.S.2011, § 1086; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. All issues that could have been raised in a previous direct appeal proceeding but were not are waived, and may not be the basis of a post-conviction application. *Id.* 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. *Id.*

Petitioner has failed to establish entitlement to any relief in this post-conviction proceeding. Petitioner's propositions of error could have been raised on direct appeal, and are thus waived. *Id.* He has not established sufficient reason for not asserting or inadequately raising his current grounds for relief in direct appeal proceedings.

Petitioner also sought post-conviction 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*, 142 S. Ct. 757 (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, 497 P.3d at 691-92, 94.

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. We decline Petitioner's request to reexamine this Court's holding in *Matloff*. Therefore, the order of the District Court of Pottawatomie County denying Petitioner's application for post-conviction relief in Case No. CRF-1993-392 should be, and is hereby,

AFFIRMED.

In Petitioner's application filed with the clerk of trial court, he alleged in the alternative that he should be granted an appeal out of time but he did not provide sufficient evidence or any authority to establish that he was denied an appeal through no fault of his own. In the order filed January 10, 2022, the trial court denied Petitioner's request for an appeal out of time. The trial court reviewed Petitioner's application and did not find any support for Petitioner's claim he was denied an appeal through no fault of his own.

We agree. Petitioner must prove he was denied an appeal through no fault of his own in order to be granted an appeal out of time. *Dixon v. State*, 2010 OK CR 3, ¶ 5, 228 P.3d 531, 532. Petitioner's application

to this Court and the record fail to establish Petitioner was denied an appeal through no fault of his own. This Court has repeatedly held it will not allow a Petitioner to waive direct appeal and proceed under a post-conviction appeal out of time without furnishing sufficient reasons for his failure to appeal. *Webb v. State*, 1983 OK CR 40, ¶ 3, 661 P.2d 904, 905. Therefore, Petitioner's post-conviction petition for an appeal out of time is **DENIED**.

On January 28, 2022, Petitioner filed two pleadings titled Petition in Error with the Clerk of this Court. Both challenged the same January 10, 2022, order denying post-conviction relief in Case No. CRF-1993-392. The Clerk of this Court inadvertently filed the pleadings as separate appeals assigned this Court's Case Nos. PC-2022-116 and PC-2022-117. The Clerk is directed to transfer all pleadings filed in Case No. PC-2022-117 to Case No. PC-2022-116. Case No. PC-2022-117 is **DISMISSED**.

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
13 day of April, 2022.

Scott Rowland
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

William J. Musseman
WILLIAM J. MUSSEMAN, Judge

ATTEST:

John D. Hadden
Clerk
PA

**Additional material
from this filing is
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Clerk's Office.**