

ORIGINAL



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

BENJAMIN COLE,)
)
 Petitioner,)
 vs.)
)
 JIM FARRIS, Warden,)
 Oklahoma State Penitentiary,)
)
 Respondent.)

NOT FOR PUBLICATION

No. MA-2022-898

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 17 2022

JOHN D. HADDEN
CLERK

ORDER DENYING EXTRAORDINARY RELIEF

On October 10, 2022, Petitioner, Benjamin Cole, by and through counsel, Thomas D. Hird and Katrina Conrad-Legler, filed pleadings in this Court seeking extraordinary relief. Petitioner requests that this Court issue a writ requiring Respondent, Jim Farris, Warden, Oklahoma State Penitentiary, to notify the District Attorney of Pittsburg County that there is good reason to believe that Petitioner, under judgment of death, has become insane as provided in 22 O.S.2021, § 1005. Petitioner has also moved for a stay of his execution, scheduled for October 20, 2022.¹

PROCEDURAL HISTORY

¹ Respondent filed a combined response to Petitioner’s Petition for Writ of Mandamus and Application for Stay of Execution.

Petitioner was tried by jury in the District Court of Rogers County and convicted of First Degree Child Abuse Murder (21 O.S.2001, § 701.7(C)), for the December 20, 2002 murder of his nine-month-old daughter, Brianna Cole. The jury found the existence of two aggravating circumstances: (1) that Petitioner had been previously convicted of a felony involving the use or threat of violence to the person; and (2) that the murder was especially heinous, atrocious, or cruel. *Cole v. State*, 2007 OK CR 27, ¶¶ 1-2, 164 P.3d 1089, 1092. The trial court sentenced Petitioner to death in accordance with the jury's verdict. Petitioner appealed his conviction and sentence to this Court, but we denied relief. *Id.*, 2007 OK CR 27, ¶ 66, 164 P.3d at 1102. He sought *certiorari* review in the United States Supreme Court, but the Court denied his petition. *Cole v. Oklahoma*, 553 U.S. 1055 (2008). We denied Petitioner's application for post-conviction relief. *Cole v. State*, PCD-2005-23, (Okl. Cr. Jan. 24, 2008) (unpublished).

Petitioner sought federal habeas corpus relief. On September 1, 2011, the United States District Court for the Northern District of Oklahoma denied his Petition for Writ of Habeas Corpus. *Cole v. Workman*, 2011 WL 3862143 (N.D. Okla. Sept. 1, 2011). On February 18, 2014, the Tenth Circuit Court of Appeals affirmed the denial of

federal habeas corpus relief. *Cole v. Trammell*, 755 F.3d 1142 (10th Cir. 2014). On October 6, 2014, the United States Supreme Court denied Cole's petition for *certiorari* review. *Cole v. Trammell*, 571 U.S. 891 (2014).

On October 10, 2014, the State filed an application with this Court seeking entry of an order scheduling Petitioner's execution. On October 24, 2014, this Court set March 5, 2015, as the date for Petitioner's execution. Petitioner, along with four other Oklahoma prisoners under a sentence of death, filed an action in federal district court under 42 U.S.C. § 1983 contending that Oklahoma's method of execution violated the Eighth Amendment. Petitioner and the other prisoners moved for a preliminary injunction against Oklahoma's lethal injection protocol. The federal district court denied the motion and the Tenth Circuit Court of Appeals affirmed. *Glossip v. Gross*, 776 F.3d 721, 723-27, 736 (10th Cir. 2015). The United States Supreme Court granted *certiorari* and on January 28, 2015, stayed Petitioner's execution pending final disposition of his request for a preliminary injunction. *Glossip v. Gross*, 574 U.S. 1143 (2015). On June 29, 2015, the Supreme Court affirmed the judgment of the Court of Appeals for the Tenth Circuit, dissolved the stay, and held that Oklahoma's

method of execution was constitutional. *Glossip v. Gross*, 576 U.S. 1143 (2015).

On that same date, the State filed a second application seeking to schedule Petitioner's execution date. On July 2, 2015, Petitioner filed his objection to the setting of an execution date. In the absence of any proof that sanity proceedings had been properly instituted pursuant to 22 O.S.2011, § 1005 and *Allen v. State*, 2011 OK CR 31, 265 P.3d 754, we overruled Petitioner's objection and on July 8, 2015, this Court set October 7, 2015, as the date for Petitioner's execution.

On July 22, 2015, Petitioner, by and through counsel, filed a Petition for Writs of Mandamus and/or Prohibition in the District Court of Pittsburg County, Case Number No. CV-2015-58, which requested the District Court require Respondent institute proceedings to determine Petitioner's competence to be executed pursuant to 22 O.S.2011, § 1005, and requested an evidentiary hearing on the issue. Petitioner further sought to prohibit Respondent from putting him to death other than by administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent. On August 17, 2015, the case came on for conference and the

District Court directed Respondent to cause Petitioner to speak to his attorneys as well as the mental health professional they had retained.

On August 25, 2015, the Honorable James Bland, District Judge, denied Petitioner's request for a writ of prohibition. The District Court granted Petitioner an evidentiary hearing to enable Petitioner to present evidence that he met the high burden of "a substantial threshold showing" of insanity this Court recognized in *Allen*, 2011 OK CR 31, ¶ 9, 265 P.3d at 756-57, but refused counsel for Petitioner's request to order Petitioner sedated and medically examined against his will.

On August 28, 2015, the District Court conducted the evidentiary hearing to determine whether Petitioner met the substantial threshold showing. Counsel for Petitioner introduced some of Petitioner's writings and certain records from the Department of Corrections concerning Petitioner's medical and mental health status. Counsel also introduced the testimony of four witnesses, including a psychiatrist, which the federal public defender's office had retained.² Reciting the "substantial threshold showing" from *Allen*, the District

² The State stipulated to the admissibility of the mental health records.

Court determined that Petitioner had not met the burden of proof and had not shown that Respondent had refused to carry out a clear legal duty. Petitioner sought writs of mandamus and prohibition in this Court and we denied relief on October 2, 2015, finding no abuse of discretion since “there is not a reasonable probability that Petitioner lacks the competency to be executed. As such, we conclude that Respondent did not have a clear legal duty to act under § 1005.” *Cole v. Trammell*, 2015 OK CR 13, ¶¶ 35-36, 358 P.3d 932, 941.

Petitioner sought post-conviction relief in this Court a third time, and we denied his request for relief on October 7, 2021. *Cole v. State*, 2021 OK CR 28, 499 P.3d 760. On February 22, 2022, the United States Supreme Court denied Cole’s petition for *certiorari* review. *Cole v. Oklahoma*, __ U.S. __, 142 S. Ct. 1139 (2022). Petitioner then sought to reopen his 2015 federal habeas case in the Northern District of Oklahoma which the Court allowed. On June 13, 2022, the Northern District issued an Order for Mental Health Evaluation which occurred at the Oklahoma Forensic Center. Scott Orth, Psy.D., conducted the evaluation and submitted his report to the Northern District on July 14, 2022. Orth determined Petitioner had a rational understanding of the reason for his execution and that his execution was imminent.

Counsel sent a letter to the warden with numerous medical reports including Orth's, requesting that he notify the Pittsburgh County District Attorney that there was a reasonable probability that Petitioner had become insane so that a hearing on his insanity could be scheduled.

On July 1, 2022, this Court scheduled Petitioner's execution for October 20, 2022, pursuant to the State's request. On August 2, 2022, Respondent sent a letter to Petitioner's counsel advising that based upon all the information and materials provided by Petitioner's attorneys and the evaluation by Dr. Orth, he had no good reason to believe Petitioner had become insane since his delivery to the Oklahoma State Penitentiary for execution.

Petitioner initiated mandamus proceedings in the District Court of Pittsburgh County on August 15, 2022. He sought an order compelling Respondent to notify the Pittsburgh County District Attorney that there were reasonable grounds to believe Petitioner was insane. The District Court, Judge Michael Hogan, held an evidentiary hearing on the matter on September 30, 2022. After receiving all the medical evidence and hearing testimony of Respondent, Judge Hogan found Petitioner failed to "meet the required 'substantial threshold'

showing of insanity” and denied Petitioner’s request for a Writ of Mandamus on October 4, 2022.

FACTS

Petitioner killed his nine-month-old daughter, Brianna Cole, on the evening of December 20, 2002. He snapped her spine in half, completely tearing through her aorta. The State Medical Examiner ruled the death a homicide and described the official cause of death as fracture of the spine with aortic laceration. Petitioner confessed to causing the fatal injuries. He explained that he’d been trying, unsuccessfully, to get the child, who was lying on her stomach, to stop crying. Petitioner grabbed his daughter by the ankles and pushed her legs toward her head until she flipped over. This action broke the child’s back and resulted in the fatal injuries. Afterwards, Petitioner played video games, denied anything was wrong with the child when confronted by his wife, and said nothing to rescue or medical personnel about what had happened. *Cole*, 2007 OK CR 27, ¶¶ 1-4, 164 P.3d at 1092-93.

Petitioner’s competence has been litigated throughout this case. Most of his competence claims concern his lack of communication with counsel or those associated with counsel, his disagreements with

counsel, his refusal to assist counsel and his dedication to his religious beliefs. All state and federal courts have rejected Petitioner's claims.

In these proceedings, as he did in the District Court and as he did in 2015, Petitioner argues that he is incompetent to be executed, primarily relying upon reports from three experts, none of whom were able to converse with Petitioner regarding his incompetence. Raphael Morris, M.D., who prepared his initial report prior to the 2015 hearing, diagnosed Petitioner with schizophrenia, despite his minimal interaction with him. Morris admitted, however, that "Petitioner was aware of the nature of the proceedings against him what he was tried for, the purpose of his punishment, and his impending fate." *Cole*, 2015 OK CR 13, ¶ 29, 358 P.3d at 939. Morris's report for this hearing basically avers that he has learned nothing which changes the opinion he gave in his initial report.

George Hough, Ph.D., never received cooperation from Petitioner despite numerous attempts to evaluate him, dating from 2016. However, Hough gave his opinion, based upon other records and observations of Petitioner, that Petitioner is mentally ill and not competent to be executed. Hough's most recent attempt to evaluate Petitioner occurred in April of 2022. Petitioner refused to leave his cell

or to speak with Hough or counsel, so the two men observed Petitioner through an opening in his cell door. Hough reiterated his earlier opinion about Petitioner's competence, despite having no interaction with him.

Another expert, radiologist Travis Snyder, D.O., never met with Petitioner, but reviewed an MRI scan of Petitioner's brain taken on March 30, 2022. He observed some physical changes in Petitioner's brain which he believes may have worsened Petitioner's alleged schizophrenia. Despite never having met Petitioner or examined him, Snyder opined that the imaging supports other opinions that Petitioner is incompetent.

Pursuant to an order from the Northern District, Scott Orth, Psy.D., evaluated Petitioner at the Oklahoma Forensic Center on July 5, 2022. Orth spent two and one half hours with Petitioner. Orth also reviewed Petitioner's medical records, his Oklahoma Department of Corrections records, school records and court records. In his report, Orth states that Petitioner spontaneously told him, "they want to make sure I'm competent, and that I realize first that I killed my daughter and I went through a trial for taking my daughter's life and a jury found me guilty; they found me guilty of murder and I was given the death

penalty for that, and I accept responsibility for that.” Petitioner also told Orth he was “third on the list [to be executed]” and he believed his execution date was October 20, 2022. Orth determined Petitioner did not suffer from any delusions and exhibited no “evidence of any substantial, overt signs of mental illness, intellectual impairment, and/or neurocognitive impairment that would preclude his ability to rationally understand that he is to be executed and that his execution is imminent.” While Petitioner spoke about his religious beliefs during this evaluation, Orth stated those beliefs did not affect Petitioner’s understanding of his crime, criminal punishment or his impending execution.

Respondent testified at the hearing. He indicated he had never observed Petitioner to be dirty and that Petitioner was very specific in ordering food items from the canteen. On September 15, 2022, Respondent had Petitioner moved to an execution cell as is DOC’s policy. At that time, Tina Fuller of the prison mental health team, explained the execution procedures to Petitioner and Fuller was confident in Petitioner’s understanding of those and of his competence. Respondent read the death warrant to Petitioner, stopping every so often and asking Petitioner if he understood. Petitioner nodded his

understanding. Petitioner's main concern during this time with Respondent was that he would have extra items in his cell so that he would be warm and that he would receive his canteen orders. Petitioner made some phone calls. Respondent gave his opinion that Petitioner consciously decides if he will speak to people or not. The warden confirmed that he did not believe that Petitioner had become incompetent to be executed. Judge Hogan found Petitioner failed to "meet the required 'substantial threshold' showing of insanity" and denied Petitioner's request for a Writ of Mandamus.

STANDARD OF REVIEW

The requirements for the issuance of an extraordinary writ are set forth in Rule 10.1, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022). For a writ of mandamus, "[p]etitioner has the burden of establishing (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief." Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022).

Petitioner argues the District Court's decision was "plainly erroneous." "In cases of this nature, this Court will review pursuant to

the clearly erroneous standard, *i.e.*, for an abuse of discretion.” *Cole*, 2015 OK CR 13, ¶ 18, 358 P.3d at 937. An abuse of discretion is a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented or, stated otherwise, any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170 (internal citation and quotation marks omitted).

DISCUSSION

Petitioner argues both the warden and the District Court abused their discretion in this matter and that Oklahoma’s procedure for seeking a competency determination in these cases violates the Constitution.

In *Ford v. Wainwright*, 477 U.S. 399, 410 (1986) (plurality), the Court held that “[t]he Eighth Amendment prohibits the State from inflicting the penalty of death upon a prisoner who is insane.” *See also Allen v. State*, 2011 OK CR 31, ¶ 8, 265 P.3d 754, 756. In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the Supreme Court explained the plurality holding in *Ford*. “Once a prisoner seeking a stay of execution has made ‘a substantial threshold showing of insanity,’ the protection

afforded by procedural due process includes a ‘fair hearing’ in accord with fundamental fairness.” *Panetti*, 551 U.S. at 949 (quoting *Ford*, 477 U.S. at 424, 426); *Allen*, 2011 OK CR 31, ¶ 89 265 P.3d at 756-57.

Such a hearing “may be far less formal than a trial” but must afford a prisoner an “opportunity to be heard” consistent with the “basic requirements required by due process.” *Panetti*, 551 U.S. at 949-50 (citations and quotations omitted). “These basic requirements include an opportunity to submit ‘evidence and argument from the prisoner’s counsel, including expert psychiatric evidence that may differ from the State’s own psychiatric examination.’” *Id.* (quoting *Ford*, 477 U.S. at 427).

Under our statute, 22 O.S.2021, § 1005, proceedings to determine the competence of a defendant who is to be executed must be commenced when “there is good reason to believe that a defendant under a sentence of death has become insane.” That procedure entails the warden bringing the matter to the attention of the district attorney in Pittsburgh County who should immediately file in the county district court a petition “stating the judgment and the fact that the defendant is believed to be insane and asking that the question of his sanity be

inquired into.” *Id.* Thereafter, the court must impanel a jury to hear the inquiry. *Id.*

Although Section 1005 provides for the warden to institute such proceedings when “there is good reason to believe that a defendant under a sentence of death has become insane,” judicial oversight of the warden’s performance of that role is available through mandamus proceedings. *See Woolen v. Coffman*, 1984 OK CR 53, ¶ 6, 676 P.2d 1375, 1376-77 (“Mandamus is a command from a court of law of competent jurisdiction . . . to some inferior court, tribunal, or board, or corporation or person, requiring the performance of a duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from the operation of law.”). Should the district court deny mandamus relief, this Court will entertain a petition for such relief. Rule 10.1(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022).

This Court recognizes the propriety of the procedure under Section 1005 and the adequacy of mandamus review on the issue of competence to be executed. In *Allen*, 2011 OK CR 31, ¶ 9, 265 P.3d at 756-57, we expressly determined that “Oklahoma’s procedure on its face complies with the federal constitution.” The Tenth Circuit Court

of Appeals has also recognized the adequacy of Oklahoma's procedure in this regard, albeit in unpublished opinions. See *Ochoa v. Trammell*, 504 Fed.Appx. 705, 708 (10th Cir. Dec. 3, 2012) (unpublished) (citing *Allen v. Workman* and finding it persuasive in denying Ochoa's identical challenge); *Allen v. Workman*, 500 Fed.Appx. 708, 710-12 (10th Cir. Oct. 8, 2012) (unpublished) (the warden's role as "gatekeeper" does not violate due process). As Petitioner has not presented any authority that our decision in *Allen* was wrongly decided we see no reason to depart from our prior holding. Petitioner's challenge to the procedure for handling competency to be executed claims is denied.

Turning now to Petitioner's claim that the District Court abused its discretion in denying his petition for Writ of Mandamus, we deny his claim. We find that the trial court did not abuse its discretion when it found that Petitioner "does not meet the required 'substantial threshold' showing of insanity." A prisoner under a sentence of death must meet this requirement before he is entitled to an adjudication to determine his condition. *Panetti*, 551 U.S. at 950; *Ford*, 477 U.S. at 426 ("substantial threshold showing of insanity [required] merely to trigger the hearing process."); *Murphy v. State*, 2012 OK CR 8, ¶ 35, 281 P.3d 1283, 1293. Because the threshold was not met, the warden

did not abuse his discretion in refusing to make the notification pursuant to Section 1005.

In *Ford*, the Court recognized “that some high threshold showing on behalf of the prisoner will be found a necessary means to control the number of nonmeritorious or repetitive claims of insanity” focused on “providing redress for those with substantial claims.” *Ford*, 477 U.S. at 417. There is a presumption that the prisoner is competent. *Id.*, 477 U.S. at 426. A prisoner must overcome this presumption and show that there is a reasonable probability that he is insane. *Id.*, 477 U.S. at 426; *Leland v. Oregon*, 343 U.S. 790, 799 (1952).

In *Bingham v. State*, 1946 OK CR 54, 169 P.2d 311, this Court set forth the standard for sanity to be executed:

The test of the question as to whether one about to be executed is sane or insane is whether or not such person, at the time of the examination, from the defects of his faculties, has sufficient intelligence to understand the nature of the proceedings against him, what he was tried for, the purpose of his punishment, the impending fate which awaits him, and a sufficient understanding to know any fact which might exist which would make his punishment unjust or unlawful, and the intelligence requisite to convey such information to his attorneys or the court. If he has, then he is sane; otherwise he is insane, and should not be executed.

Id., 82 Okla. Crim. 305, 311, 169 P.2d at 314-15 (quotations and citation omitted).

Although the United States Supreme Court did not set forth a precise standard of competency in *Ford*, the Supreme Court in *Panetti* recognized that “[a] prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it.” *Panetti*, 551 U.S. at 957, 959. To have a rational understanding, the prisoner’s mental state must not be so distorted by delusions or mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole. *Id.*, 551 U.S. at 959-60. However, the Supreme Court clarified that:

The mental state requisite for competence to suffer capital punishment neither presumes nor requires a person who would be considered “normal,” or even “rational,” in a layperson’s understanding of those terms. Someone who is condemned to death for an atrocious murder may be so callous as to be unrepentant; so self-centered and devoid of compassion as to lack all sense of guilt; so adept in transferring blame to others as to be considered, at least in the colloquial sense, to be out of touch with reality.

Id.

Reviewing the evidence adduced at the hearing, it is clear that Petitioner, while exhibiting some peculiar behaviors, completely and

rationality understood the nature of the proceedings against him, what he was tried for, and that his execution was imminent. Orth, a neutral evaluator selected by the Oklahoma Forensic Center to evaluate Petitioner pursuant to the Northern District's order, interviewed Petitioner at length in July 2022. He opined that Petitioner did not suffer from any delusions and exhibited no "evidence of substantial, overt signs of mental illness, intellectual impairment, and/or neurocognitive impairment that would preclude his ability to rationally understand that he is to be executed and that his execution is imminent." Moreover, Orth quoted Petitioner in his report as spontaneously stating the following: "they want to make sure I'm competent, and that I realize first that I killed my daughter and I went through a trial for taking my daughter's life and a jury found me guilty; they found me guilty of murder and I was given the death penalty for that, and I accept responsibility for that." Petitioner also told Orth he was "third on the list [to be executed]" and he believed his execution date was October 20, 2022. Orth had no difficulties in communicating with Petitioner. While Petitioner spoke about his religious beliefs during this evaluation, Orth stated those beliefs did not affect

Petitioner's understanding of his crime, punishment or his impending execution.

Respondent testified at the hearing and indicated he had never observed Petitioner to be dirty and that Petitioner was very specific in ordering food items from the canteen and voicing complaints if the order was incorrect. On September 15, 2022, Respondent had Petitioner moved to an execution cell as is DOC's policy. At that time, Tina Fuller of the prison mental health team explained the procedures that would occur to Petitioner and Fuller was confident in Petitioner's understanding of those and of his competence. Respondent read the death warrant to Petitioner, stopping every so often and asking Petitioner if he understood. Petitioner nodded his understanding. Petitioner's main concern during this time with Respondent was that he would have extra items in his cell so that he would be warm and that he would receive his canteen orders. Petitioner made some phone calls. Respondent gave his opinion that Petitioner consciously decides if he will speak to people or not. Respondent confirmed that he did not believe that Petitioner had become incompetent to be executed.

Petitioner admitted several expert reports at the hearing. The most striking aspect of these reports is that none of them were based

upon the experts' personal interactions with Petitioner. A recurring theme in these materials is that Petitioner holds strong religious beliefs and generally refuses to communicate with counsel, or anyone associated with counsel. The first expert, Raphael Morris, M.D., who prepared his initial report prior to the 2015 hearing, diagnosed Petitioner with schizophrenia, despite his minimal interaction with him. Morris admitted, however, that "Petitioner was aware of the nature of the proceedings against him what he was tried for, the purpose of his punishment, and his impending fate." *Cole*, 2015 OK CR 13, ¶ 29, 358 P.3d at 939. In his updated report admitted at this hearing, again absent any personal contact with Petitioner, Morris's opinion is that he has learned nothing about Petitioner which causes him to change his initial opinion.

George Hough, Ph.D., never received cooperation from Petitioner despite numerous attempts to evaluate him beginning in 2016. However, Hough gave his opinion, based upon other records and observations of Petitioner, that Petitioner is mentally ill and not competent to be executed. Hough's most recent attempt to evaluate Petitioner occurred in April of 2022. Petitioner refused to leave his cell or to speak with Hough or counsel, so the men observed him through

an opening in his cell door. Based upon this, Hough reiterated his same opinion about Petitioner's competence, referencing Petitioner's refusal to interact with him as evidence of his incompetence. In Petitioner's prior mandamus proceeding, this Court found Petitioner's refusal to cooperate with these medical professionals and his counsel "appeared to be a choice on his part." *Cole*, 2015 OK CR 13, ¶ 13, 358 P.3d at 936.

Yet another expert, radiologist Travis Snyder, D.O., never met with Petitioner, but reviewed an MRI scan of Petitioner's brain taken on March 30, 2022. He observed some physical changes in Petitioner's brain which he believes may have worsened Petitioner's alleged schizophrenia. Despite never having met Petitioner or examined him, Snyder opined that the MRI scan supports other opinions that Petitioner is incompetent.

Petitioner attempted to discredit Orth's evaluation by submitting Hough's critique of it. However, the main thrusts of his critique are that Orth's report is based upon a single interview with Petitioner, rather than a series, and his skepticism that Petitioner would communicate so freely with Orth. Given the fact that Hough's opinions about Petitioner's competence are based upon not even one interview

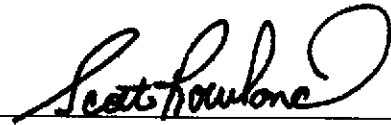
with him, such a critique is incredible. Moreover, in *Cole*, 2015 OK CR 13, ¶ 12, 358 P.3d at 936, this Court determined that Petitioner was initially willing to speak with his defense team; but after reading a report prepared by Morris during federal habeas proceedings, disparaging Petitioner's beliefs as a "primitive coping mechanism," he refused to interact with them.. It seems clear that Petitioner viewed Orth, not a member of Petitioner's defense team, but a neutral evaluator, as someone who held no pre-conceived notions about him.

Petitioner has provided no new evidence regarding his competence, other than Orth's report which finds him to be competent to be executed. Based upon the entire record, we find there is not a reasonable probability that Petitioner lacks the competence to be executed. Accordingly, we conclude neither Respondent nor the District Court abused their discretion in finding Petitioner failed to meet the required "substantial threshold" showing of insanity. Petitioner's Petition for Writ of Mandamus is **DENIED**. Petitioner's Motion for Stay of Execution is **DENIED**.

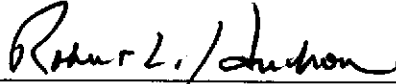
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

17 day of October, 2022.



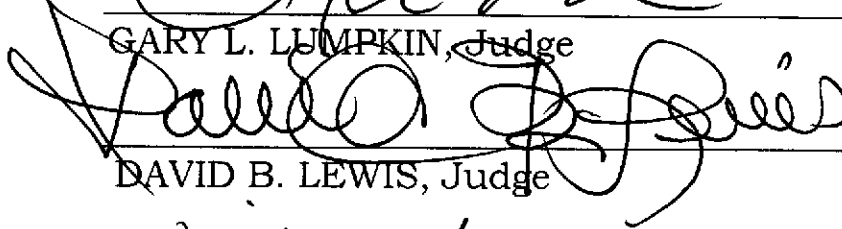
SCOTT ROWLAND, Presiding Judge



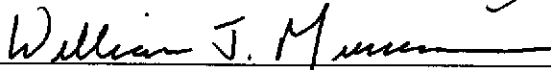
ROBERT L. HUDSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge



WILLIAM J. MUSSEMAN, Judge

ATTEST:



Clerk