

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

SEP - 6 2022

JUAN M. VAZQUEZ-PEDROSA,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

JOHN D. HADDEN  
CLERK

No. PC-2022-641

**ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF**

Petitioner has appealed to this Court from a May 23, 2022, order denying his second request for post-conviction relief in Cleveland County District Court Case No. CF-2010-1870. In that case, Petitioner was convicted by a jury of ten counts of Child Sexual Abuse and was sentenced to life imprisonment.<sup>1</sup> Petitioner's conviction was affirmed by this Court. *See Vasquez v. State*, No. F-2012-377 (Okl.Cr. January 15, 2014)(not for publication). The Honorable Jeff Virgin, District Judge, denied Petitioner's Post-Conviction Application.

<sup>1</sup> Counts 1 and 2 to run concurrently to each other, Counts 3 and 4 to run concurrently to each other, Counts 5 and 6 to run concurrently to each other, Counts 7 and 8 to run concurrently to each other and Count 9 and 10 to run concurrently to each other, but each pair of counts to run consecutively with each other for a term of five consecutive life sentences.

APPENDIX A

Petitioner raises two propositions of error in his Second Application for Post-Conviction Relief. The Petitioner claims he received ineffective assistance of appellate counsel since his attorney, on direct appeal, failed to raise issues that were “plainly meritorious” and that the District Court lacked subject matter jurisdiction to try him because the offense occurred on public land belonging to the United States.

We review the District Court’s determination for an abuse of discretion. *State ex rel. Smith v. Neuwirth*, 2014 OK CR 16, ¶ 12, 337 P.3d 763, 766. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

Petitioner’s first proposition of error alleges that he received ineffective assistance of appellate counsel. Petitioner has previously filed an application for post-conviction relief that was denied by the trial court. The denial was not appealed to this Court. Petitioner was fully afforded the opportunity for post-conviction relief in his previous application. Petitioner has failed to establish entitlement to any relief

in this subsequent post-conviction proceeding. “In the interests of efficiency and finality, our judicial system employs various doctrines to ensure that issues are not endlessly re-litigated.” *Smith v. State*, 2013 OK CR 14, ¶ 14, 306 P.3d 557, 564. All issues that were previously raised and ruled upon in direct appeal proceedings or previous post-conviction proceedings are barred as *res judicata*, and all issues that could have been raised in those previous proceedings but were not are waived, and may not be the basis of a subsequent post-conviction application. 22 O.S.2011, § 1086; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. Post-conviction review is not an opportunity for a second chance to argue claims of error in hopes that doing so in a different proceeding may change the outcome. *Turrentine v. State*, 1998 OK CR 44, ¶ 12, 965 P.2d 985, 989. “Simply envisioning a new method of presenting an argument previously raised does not avoid the procedural bar.” *McCarty v. State*, 1999 OK CR 24, ¶ 9, 989 P.2d 990, 995. “Appellate jurisprudence was not created or designed to allow a person convicted of a crime to continually challenge a conviction with new assertions of error.” *Mayes v. State*, 1996 OK CR 28, ¶ 14, n.3, 921 P.2d 367, 372, n.3.

Petitioner's proposition of error either was or could have been raised in his previous application for ~~post-conviction relief~~, and is thus barred by res judicata or waived. 22 O.S.2011, § 1086; *Fowler*, 1995 OK CR 29, ¶ 2, 896 P.2d at 569. He has not established any sufficient reason for not asserting or inadequately raising his current ground for relief in his previous application for post-conviction relief. *Id.*

Petitioner's second proposition of error is the District Court lacked jurisdiction to convict and punish him. See *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, 694. 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.

Petitioner relies on Article I, Section 3 of Oklahoma's Constitution to support his argument that the State of Oklahoma lacks jurisdiction over his crime. This Section provides:

The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

Okla. Const. art. 1, § 3.

Despite its broad language, this provision has long been construed to deny the State of Oklahoma criminal jurisdiction only when the federal statutes grant jurisdiction to federal courts. *Goforth v. State*, 1982 OK CR 48, ¶ 8, 644 P.2d 114, 116. “Thus, where federal law does not purport to confer jurisdiction on the United States courts, the Oklahoma Constitution does not deprive Oklahoma courts of obtaining jurisdiction over the matter.” *Id.*

Federal law preempts the state’s jurisdiction over crimes committed by Indians within Indian country. See 18 U.S.C. §§ 1152, 1153; *Negonsott v. Samuels*, 507 U.S. 99, 102–103 (1993). The trial court in this matter found that Petitioner had not sufficiently proved Indian status or that the crime was committed in Indian country. We agree.

A defendant has the burden to prove Indian status for dismissal based on lack of jurisdiction. *State v. Klindt*, 1989 OK CR 75, ¶ 5, 782 P.2d 401, 403. Here, Petitioner gave no indication that he has some Indian blood or that he was recognized as an Indian by a tribe or the federal government at the time of these offenses. *Parker v. State*, 2021 OK CR 17, ¶ 32, 495 P.3d 653, 664. He also failed to produce any evidence that the victim was an Indian for purposes of federal law. “[T]he burden is upon the petitioner to sustain the allegations of his petition . . . .” *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294. Petitioner’s unsupported assertions are not sufficient to warrant relief. *See Brown v. State*, 1997 OK CR 1, ¶ 33, 933 P.2d 316, 324-25.

Further, Petitioner advances no argument that the location of his crimes falls within Indian country. *See* 18 U.S.C. § 1151. Instead, he sets forth a general discussion of Oklahoma’s history regarding United States’ relations with the Muscogee (Creek) Nation, statehood, and the Supreme Court’s recent decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Petitioner cites no congressional act granting jurisdiction to the United States courts over this matter. *See United States v. Ramsey*, 271 U.S. 467, 559-60 (1926) (“The authority of the United

States under section 2145 [the predecessor of 18 U.S.C. § 1152] to punish crimes occurring within the state of Oklahoma, not committed by or against Indians, was ended by the grant of statehood.”).

Petitioner does not offer sufficient factual evidence or legal authority to establish that the District Court of Cleveland County was without jurisdiction in Case No. CF-2010-1870.

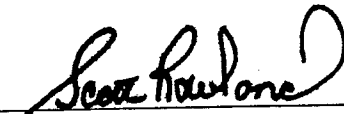
Petitioner has failed to demonstrate an abuse of discretion by the District Court. Therefore, the order of the District Court of Cleveland County denying Petitioner’s application for post-conviction relief is **AFFIRMED**.

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

6 day of September, 2022.




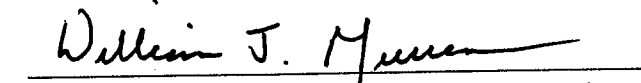
**SCOTT ROWLAND, Presiding Judge**



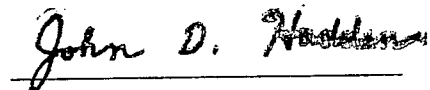
**ROBERT L. HUDSON, Vice Presiding Judge**

  
\_\_\_\_\_  
**GARY L. LUMPKIN, Judge**

  
\_\_\_\_\_  
**DAVID B. LEWIS, Judge**

  
\_\_\_\_\_  
**WILLIAM J. MUSSEMAN, Judge**

ATTEST:

  
\_\_\_\_\_  
Clerk  
PA



**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

**JUAN VASQUEZ,**

**Petitioner,**

**v.**

**THE STATE OF OKLAHOMA,**

**Respondent.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No. CF-2010-1870**

**ORDER DENYING PETITIONER'S APPLICATION  
FOR POST CONVICTION RELIEF**

The above named Petitioner has filed an Application for Post-Conviction Relief and this Court hereby denies Petitioner's Application.

**MATERIALS REVIEWED**

The Court has reviewed the following materials:

- 1) Petitioner's Brief in Support of Post-Conviction Relief and Request for an Evidentiary Hearing;
- 2) Petitioner's Application for Post-Conviction Relief and Request for Evidentiary Hearing;
- 3) Petitioner's Supplemental Brief in Support of his Application for Post-Conviction Relief;
- 4) State's Response to Petitioner's Second Application for Post-Conviction Relief and Request for Evidentiary Hearing;
- 5) Petitioner's Second Supplement in Support of his Application for Post-Conviction Relief;
- 6) Application for Post-Conviction Relief;
- 7) State's Response to Petitioner's Application for Post-conviction Relief;
- 8) Court File

## STATEMENT OF THE CASE

On December 30, 2010, Petitioner, Juan Miguel Vazquez, was charged by information in Cleveland County Case No. CF-2010-1870 with ten (10) counts of Child Sexual Abuse, in violation of 21 O.S. Supp. 2010 843.5. On December 2, 2011, Petitioner entered a plea of no contest to all counts. The District Court accepted the plea, ordered a Pre-Sentence Investigation to be conducted, and continued sentencing to January 20, 2012. On January 24, 2012, Petitioner was allowed to withdraw his plea of guilty and the case was set for jury trial. On March 13, 2012, the jury convicted Petitioner on all ten (10) counts of Child Sexual Abuse and fixed punishment at life imprisonment. On April 13, 2012, the Honorable Judge Tracy Schumacher sentenced Petitioner to life imprisonment on each count<sup>1</sup>, in accordance with the jury's recommendation.

The Petitioner perfected a timely appeal to the Oklahoma Court of Criminal Appeals, raising the following propositions of error:

- I. The introduction of Mr. Vasquez's statement to Detective Foreman constituted error, because Mr. Vasquez did not knowingly, intelligently, and voluntarily waive his constitutional rights.
- II. The Trial Court abused its discretion in refusing a defense challenge for cause of a prospective juror, thereby denying Mr. Vasquez a fair trial.

The Oklahoma Court of Criminal Appeals affirmed the decision of the trial court and denied each of the above propositions. See Exhibit 1, Unpublished Summary Opinion in F-2012-377 filed January 15, 2014.

---

<sup>1</sup> Count 1 and Count 2 are concurrent to each other, Count 3 and Count 4 are concurrent to each other, Count 5 and Count 6 are concurrent to each other, Count 7 and Count 8 are concurrent to each other, and Count 9 and 10 are concurrent to each other. Each pair of counts are consecutive to the others for an aggregate term of five (5) consecutive life sentences.

On January 29, 2014, Petitioner filed a Motion for Suspended Sentence, which was denied by Judge Schumacher.

On August 23, 2019, Petitioner, pro se, filed an Application for Post-Conviction Relief raising the following propositions of error:

- I. Ineffective assistance of trial counsel.
- II. Violation of due process.

See Exhibit 2, Application for Post-Conviction Relief filed August 23, 2019. The State of Oklahoma filed a response to Petitioner's Application for Post-Conviction Relief on December 19, 2019. The Honorable Judge Jeff Virgin denied Petitioner's Application for Post-Conviction Relief on January 7, 2020. See Exhibit 3, Order Denying Application for Post-Conviction Relief.

On February 25, 2021, Petitioner, through his attorney, Debra K. Hampton, filed another Application for Post-Conviction Relief<sup>2</sup> and Request for Evidentiary Hearing and Brief in Support, arguing Proposition I – Petitioner received ineffective assistance of appellate counsel. On April 15, 2021, Petitioner, through his attorney, Debra K. Hampton, filed a Supplemental Brief in Support of his (Second) Application for Post-Conviction Relief. In support of the supplemental brief, Petitioner argues Proposition II – the District Court lacked subject matter jurisdiction to prosecute him. An evidentiary hearing was held regarding Petitioner's claims. Based upon the evidence and pleadings presented, the Court makes the following findings set forth below.

### CONCLUSIONS OF LAW

The Post-Conviction Procedure Act, 22 O.S. §1080, *et seq.*, is neither a substitute for a direct appeal nor a means for a second appeal. *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774,

---

<sup>2</sup> To be treated as Petitioner's Second Application for Post-Conviction Relief.

775-76; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384. The scope of the Act is strictly limited and does not allow for litigation of issues available for review at the time of direct appeal. *Johnson v. State*, 1991 OK CR 124, ¶¶ 3-4, 823 P.2d 370, 372; *Castro v. State*, 1994 OK CR 53, ¶ 2, 880 P.2d 387, 388. All issues that were previously raised and ruled upon on direct appeal are procedurally barred from further review under the doctrine of res judicata, and any issue that could have been previously raised, but was not, is waived. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973.

An exception to this rule exists where a court finds sufficient reason for not asserting or inadequately presenting an issue in prior proceedings. 22 O.S. 2011, § 1086; *Berget v. State*, 1995 OK CR 66, ¶ 6, 907 P.2d 1078, 1081. This requires a showing that some impediment external to the defense prevented the petitioner and counsel from properly raising the claim. *Johnson*, 1991 OK CR 124, ¶ 7, 823 P.2d at 373. Petitioner has the burden of establishing that his claim could not have been previously raised and thus is not procedurally barred. *Robinson v. State*, 1997 OK CR 24, ¶ 17, 937 P.2d 101, 108.

Further, Section 1086 directs that “all grounds for relief available to an applicant under the Post-Conviction Procedure Act must be raised in the original application and that any ground not so raised, or bypassed, may not be the basis for a subsequent application unless sufficient reason is given for not asserting or inadequately raising the issue in the prior application or in any other proceeding taken to secure relief.” *Webb v. State*, 835 P.2d 1115 (Okla. Cr. 1992).

As stated above, this is Petitioner’s Second Application for Post-Conviction Relief. The Court does not find Petitioner has established or provided a sufficient reason why he could not have brought claim of ineffective assistance of appellate in his previous Application. As such, the Court finds his first proposition is barred by the doctrine of waiver. The Court of Criminal

Appeals has stated that where a claim is procedurally barred, there is no need to address the merits of the issues presented. *Boyd v. State*, 915 P.2d 922, 924 (Okla. Cr. 1996). Consequently, the allegation of error raised by Petitioner need not be addressed and the Court finds Proposition 1 should be and is hereby denied.

Petitioner's attack on the court's subject matter jurisdiction could have been raised on direct appeal. Petitioner provides no reason for failing to previously assert this issue. As such, the Court could deem said proposition waived. However, the Court of Criminal Appeals has held that such claims are not subject to any procedural bars.<sup>3</sup> Nevertheless, Petitioner fails to demonstrate that this Court lacked jurisdiction over this case. See *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294 (it is fundamental that petitioner has burden of sustaining the allegations of his post-conviction application); *Brown v. State*, 1997 OK CR 1, ¶ 33, 933 P.2d 316, 324-25 (post-conviction applicant bears the burden of rebutting presumption of regularity in trial court proceedings).

It is unclear on what grounds Petitioner bases his jurisdictional attack. Almost the entirety of Proposition II discusses Oklahoma's history regarding the United States' relations with the Muscogee (Creek) Nation, statehood, and the Supreme Court's recent decision in *McGirt*, which held that Congress has not disestablished the boundaries of the Creek Reservation in Northeast Oklahoma as they existed under 1866 treaty provisions. *McGirt*, 140 S.Ct. at 2482. However, Petitioner does not allege here that he committed these crimes within those boundaries, nor on any other tribal lands. See 18 U.S.C. § 1151 (defining Indian country). Furthermore, Petitioner does not allege that he (or his victim) was an Indian for purposes of federal law. See *Klindt v. State*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403 ("Proof of one's status as an Indian under federal Indian

---

<sup>3</sup> The State does not concede here that Petitioner's argument is actually viable for post-conviction review. However, irrespective of whether the waiver doctrine applies, Petitioner's jurisdictional claim in this case is meritless.

law is necessary before one can claim exemption from prosecution under state law.”). As such, he fails to show that this Court’s jurisdiction has been preempted by federal law. *See* 18 U.S.C. § 1153(a) (“Any *Indian* who commits against the person or property of another Indian or other person any of the following offenses, namely, murder . . . *within the Indian country*, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.”) (emphasis added).

District courts in Oklahoma have unlimited original jurisdiction over all justiciable matters unless otherwise provided by the Oklahoma Constitution. Okla. Const. Art. VII, § 7. It appears Petitioner is attempting to rely on Article 1, § 3 of the Oklahoma Constitution to suggest that the State of Oklahoma has no subject matter jurisdiction over criminal cases at all.<sup>4</sup> The Court of Criminal Appeals long considered and rejected a jurisdictional challenge based upon that constitutional provision, concluding—in accord with the Oklahoma Supreme Court—that “section 3 was meant to disclaim jurisdiction over Indian lands *only to the extent that the federal government claimed jurisdiction.*” *Goforth v. State*, 1982 OK CR 48, ¶ 8, 644 P.2d 114, 116 (emphasis added; citing *Currey v. Corp. Comm’n of Okla.*, 1979 OK 89, 617 P.2d 177). “Thus, where federal law does not purport to confer jurisdiction on the United States courts, the Oklahoma Constitution does not deprive Oklahoma courts from obtaining jurisdiction over the matter.” *Id.*

---

<sup>4</sup> That provision states in full:

The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Okla. Const. art. 1, § 3.

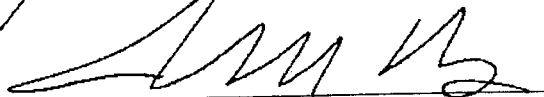
In this matter, Petitioner fails to demonstrate that federal law has conferred criminal jurisdiction to the United States in this matter. As stated above, Petitioner has shown neither that he is an Indian nor that he committed his crime in Indian country. Petitioner would have this Court find precisely the type of jurisdictional void the Court of Criminals Appeals cautioned against in *Goforth*. The Court finds no legal authority supports such a position. Consequently, the Court finds the state district court had subject matter jurisdiction over this prosecution. As such, the Court finds Proposition II should be and is hereby denied.

#### CONCLUSION

Petitioner's propositions of error are without merit and are denied for the reasons set forth above.

**THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED**, the Petitioner's Application for Post-Conviction is hereby **DENIED**.

Dated the 23 day of May, 2022.



**JEFF VIRGIN  
DISTRICT JUDGE**

### NOTICE OF RIGHT TO APPEAL

Under the authority of 22 O.S. § 1087, this order may be appealed to the Court of Criminal Appeals by petition in error filed within thirty (30) days from the entry of the judgment. To do so, a notice of intent to appeal must be filed within ten (10) days of the entry of the judgment. This Court may stay the execution of the judgment pending disposition of the appeal., provided however, the Court of Criminal Appeals may direct the vacation of an order staying the execution prior to final disposition of the appeal.

### CERTIFICATE OF SERVICE

This is to certify that a true and correct CERTIFIED COPY of the above and foregoing Order Denying Application for Post-Conviction Relief was mailed ON THE DAY OF FILING.

Juan Miguel Vasquez, # 648915  
Joseph Harp Correctional Center  
P.O. Box 548  
Lexington, OK 73051

Debra Hampton, attorney for Petitioner  
3126 S. Blvd  
PMB 304  
Edmond, OK 73013

AND BY HAND TO:

Madison Clark  
Assistant District Attorney  
201 S. Jones, Suite 300  
Norman, OK 73069

\_\_\_\_\_  
Deputy Court Clerk



IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JUAN VASQUEZ,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F 2012-377

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

JAN 15 2014

SUMMARY OPINION

MICHAEL S. RICHIE  
CLERK

LEWIS, PRESIDING JUDGE:

Juan Vasquez, Appellant, was convicted of ten counts of child sexual abuse in violation of 21 O.S.Supp.2010, § 843.5, in the District Court of Cleveland County, case number CF-2010-1870, before the Honorable Tracy E. Schumacher, District Judge. The jury set punishment at life imprisonment on each count. The trial court sentenced Vasquez in accordance with the jury verdict, ordering that counts one and two; counts three and four; counts five and six; counts seven and eight; and counts nine and ten be served concurrently with each other; each pair of concurrent sentences was ordered to be served consecutively with the other pairs; in other words, five consecutive life sentences are running concurrently with the other five consecutive life sentences. Vasquez now appeals raising the following propositions of error.

1. The introduction of Mr. Vasquez's statement to Detective Foreman constituted error, because Mr. Vasquez did not knowingly, intelligently, and voluntarily waive his constitutional rights.

2. The trial court abused its discretion in refusing a defense challenge for cause of a prospective juror, thereby denying Mr. Vasquez a fair trial.

After thorough consideration of Vasquez's propositions of error and the entire record before us on appeal, including the original record, transcripts, exhibits, and briefs, we have determined that the judgments and sentences of the trial court should be affirmed.

In proposition one, Vasquez alleges that he has limited skills in the English language and that the coercive explanation of the *Miranda*<sup>1</sup> rights caused his waiver of those rights to be involuntary. The trial court conducted a thorough *Jackson v. Denno*<sup>2</sup> hearing on the voluntariness of the waiver of his rights and the voluntariness of the ensuing confession. Based on the evidence presented, the trial court found that the waiver of Miranda rights was made knowingly and voluntary and the confession was also voluntary. We find that the trial court did not abuse its discretion in the assessment of the evidence. *Johnson v. State*, 2012 OK CR 5, ¶ 14, 272 P.3d 720, 727. The confession was made borne of the free will of Vasquez and was not caused by any coercive action of the authorities or any lack of English language skills. The facts of this case are indistinguishable from *Le v. State*, 1997 OK CR 55, 947 P.2d 535, and *Valdez v. State*, 1995 OK CR 18, 900 P.2d 363, where the defendants had a sufficient understanding of the English language to make a knowing and voluntary waiver.

---

<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>2</sup> 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

In proposition two, Vasquez claims that the trial court should have removed an alleged biased juror for cause. Vasquez properly preserved this issue by following the procedure noted in *Eizember v. State*, 2007 OK CR 29, ¶ 36, 164 P.3d 208, 220 (to preserve for appellate review an objection to a denial of a challenge for cause, the defense must excuse the challenged juror with a peremptory challenge and make a record of which remaining jurors the defendant would have excused if he had not used that peremptory challenge to cure the trial court's alleged erroneous denial of the for cause challenge). We review the trial court's decision for an abuse of discretion. *Williams v. State*, 2008 OK CR 19, ¶ 27, 188 P.3d 208, 217.

Here, the trial court did not abuse its discretion. This entire *voir dire* of this particular juror enforced the trial court's belief that this juror could set aside his personal feelings, properly follow the instructions of the Court, and reach a reasoned decision.

#### **DECISION**

The judgments and sentences of the district court shall be **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY  
HONORABLE TRACY E. SCHUMACHER, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

**APPEARANCES ON APPEAL**

DAVID SMITH  
216 EAST EUFAULA  
NORMAN, OK 73069  
VICKIE FLOYD  
116 WEST MAIN STREET  
NORMAN, OK 73069  
ATTORNEYS FOR DEFENDANT

RICKI J. WALTERSCHEID  
INDIGENT DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR APPELLANT

CHRISTY MILLER  
LORI PUCKETT  
ASSISTANT DISTRICT ATTORNEYS  
CLEVELAND COUNTY  
201 SOUTH JONES  
NORMAN, OK 73069  
ATTORNEYS FOR THE STATE

E. SCOTT PRUITT  
OKLAHOMA ATTORNEY GENERAL  
DONALD D. SELF  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR APPELLEE

**OPINION BY: LEWIS, P.J.**

**SMITH, V.P.J.: Concurs**  
**LUMPKIN, J.: Concurs**  
**C. JOHNSON, J.: Concurs**  
**A. JOHNSON, J.: Concurs**

I, Michael S. Tirrell, Clerk of the Appellate Courts of the State of  
Oklahoma do hereby certify that the above and foregoing is a full, true  
and correct copy of the Summary Opinion as

filed in the 15th District Court of  
the State of Oklahoma, in the 241 case, as  
indicated by the index.

By Just Clerk  
DEPUTY

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