

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

WILLIAM LANDRY, JR.,

NOV - 7 2022

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2022-832

THE STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals to this Court from an order of the District Court of Tulsa County denying his application for post-conviction relief in Case No. CF-2019-3100.

A jury convicted Petitioner of Robbery with a Dangerous Weapon (Count 1) and Possession of a Firearm After Former Conviction of a Felony (Count 3) and sentenced him to twenty-five years imprisonment and ten years imprisonment, respectively. This Court affirmed Petitioner's Judgment and Sentence on direct appeal. *Landry v. State*, No. F-2020-251 (Okl. Cr. July 22, 2021) (not for publication). Petitioner also pleaded guilty to an additional charge of Robbery with a Dangerous Weapon (Count 2) and was sentenced to ten years

imprisonment, running concurrently with Count 1 but consecutively to Count 3.

On June 10, 2022, Petitioner, pro se, filed his original Application for Post-Conviction Relief in the trial court alleging violation of his speedy trial right, ineffective assistance of appellate counsel, prosecutorial misconduct, and actual innocence. The Honorable Tracy Priddy, District Judge, denied the application in a thorough order filed on September 16, 2022.

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.

Judge Priddy first found that except as related to his allegation of ineffective assistance of appellate counsel, consideration of Petitioner's claims for relief were procedurally barred as he offered no sufficient reason for failing to raise the issues on direct appeal. We agree. See 22 O.S.2011, § 1086; *Logan v. State*, 2013 OK CR 2, ¶ 3,

293 P.3d 969, 973 (“Issues that were previously raised and ruled upon by this Court are procedurally barred from further review under the doctrine of *res judicata*; and issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review.”).

In contrast, claims of ineffective assistance of appellate counsel may be raised for the first time on post-conviction as it is usually a petitioner’s first opportunity to allege and argue the issue. *Id.*, 2013 OK CR 2, ¶ 5, 293 P.3d at 973. As set forth in *Logan*, post-conviction claims of ineffective assistance of appellate counsel are reviewed under the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* Under *Strickland*, a petitioner must show both (1) deficient performance, by demonstrating that his counsel’s conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel’s unprofessional error, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-89. “A court considering a claim of ineffective assistance of counsel must apply a ‘strong presumption’ that counsel’s representation was within the ‘wide range’ of

reasonable professional assistance.” *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland*, 466 U.S. at 689).

Before the trial court, Petitioner argued that appellate counsel’s failure to raise a speedy trial claim on direct appeal constituted ineffective legal assistance. In accordance with *Logan*, Judge Priddy reviewed the merits of the underlying speedy trial issue to assess counsel’s effectiveness. *See Logan*, 2013 OK CR 2, ¶ 6, 293 P.3d at 973. Applying the four-part balancing test set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), Judge Priddy found that Petitioner’s right to a speedy trial was not violated as none of the four factors weighed in Petitioner’s favor. *See Ellis v. State*, 2003 OK CR 18, ¶ 25, 47 P.3d 1131, 1136 (speedy trial claims are reviewed applying the four *Barker* balancing factors: (1) length of the delay; (2) reason for the delay; (3) the defendant’s assertion of his right, and (4) prejudice to the defendant).

Judge Priddy concluded that appellate counsel was not ineffective for failing to raise a meritless claim on direct appeal. We agree. *See Logan*, 2013 OK CR 2, ¶ 11, 293 P.3d at 975 (“The omission of a meritless claim, *i.e.*, a claim that was destined to lose, cannot constitute deficient performance; nor can it have been prejudicial.”).

Petitioner has failed to demonstrate an abuse of discretion by the District Court. 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

7th day of November, 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

Revised
WILLIAM J. MUSSEMAN, Judge

ATTEST:

John D. Hadden
Clerk

PA