

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 9, 2022

Before

Ilana Diamond Rovner, *Circuit Judge*
Michael B. Brennan, *Circuit Judge*
Michael Y. Scudder, *Circuit Judge*

DAVID B. MORGAN,
Petitioner-Appellant,

No. 22-2493 v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

] Appeal from the United
] States District Court for
] the Southern District
] of Indiana, New Albany
] Division.
]
] No. 4:22-cv-00066-JMS-DML
]
] Jane Magnus-Stinson,
] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

An Oklahoma inmate's father filed a petition under 28 U.S.C. § 2241 on behalf of his son, David Morgan, listing the "United States et al." as the respondent. The district court entered a judgment dismissing the petition on May 13, 2022, and David Morgan filed an appeal on August 23, 2022. The appeal, however, is untimely.

Section 2107(b) of Title 28, United States Code, requires that an appeal be filed within 60 days of entry of judgment if the United States is a party. In the present case,

~~RECEIVED~~

APPENDIX D

the deadline to appeal was July 12, 2022, making the appeal filed in this case over one month late. The district court did not grant an extension of the time to appeal, and it is too late to do so now. *See* 28 U.S.C. § 2107(c). And, this court is not empowered to grant an extension. Fed. R. App. P. 26(b).

~~XXXXXXXXXXXXXXXXXXXX~~

APPENDIX E

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 8, 2022

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-2493

DAVID B. MORGAN,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana,
New Albany Division.

No. 4:22-cv-00066-JMS-DML

Jane Magnus-Stinson, *Judge.*

ORDER

On consideration of the Motion for Relief, which we construe as Petition for Panel Rehearing, filed by Petitioner-Appellant on November 28, 2022, all members of the original panel have voted to DENY the Petition for Panel Rehearing.

Accordingly, the Petition for Panel Rehearing is DENIED.

FILED IN DISTRICT COURT
OKLAHOMA COUNTYIN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 14 2022

RICK WARREN
COURT CLERK

DAVID BRIAN MORGAN,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Case No. CF-2010-7695

29

**ORDER DISMISSING PETITIONER'S MOTION
TO DISMISS ALL CHARGES SET ASIDE CONVICTION.**

This matter comes on for consideration of Petitioner's "Motion to Dismiss All Charges Set Aside Conviction," filed on April 12, 2022, and the State's motion to dismiss the same. Having reviewed the parties' filings, the Court finds that the State's motion to dismiss should be **GRANTED**.

The Court construes Petitioner's pleading as an application for post-conviction relief. "Excluding a timely appeal, the Uniform Post-Conviction Procedure Act (22 O.S.2011, § 1080 et seq.) encompasses and replaces all common law and statutory methods of challenging a conviction or sentence." *Jones v. State*, 1985 OK CR 99, ¶ 4, 704 P.2d 1138, 1140; *Webb v. State*, 1983 OK CR 40, ¶ 3, 661 P.2d 904, 905. Petitioner challenges his convictions within his "Motion." He explicitly requests relief under the "Post Conviction Rules." As such, the Court reviews Petitioner's pleading pursuant to the requirements of the Uniform Post-Conviction Procedure Act.

The Act provides that a post-conviction "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. . . . 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." 22 O.S. § 1081 (emphasis added). The District Court does not have authority to grant an applicant's request for relief where his application for post-conviction relief is not verified. *Dixon v. State*, 2010 OK CR 3, ¶ 7, 228 P.3d 531, 532-33. The application before this Court bears no form of verification. *See* 12 O.S. § 426; Rule 1.13(L), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18. App. (2022). Thus, it is subject to dismissal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Motion to Dismiss All Charges Set Aside Conviction is **DISMISSED**.

Dated this 14 day of June, 2022.CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURTNATALIE MAI
DISTRICT JUDGE

JUN 14 2022

RICK WARREN COURT CLERK
Oklahoma County

APPENDIX A

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2022, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to:

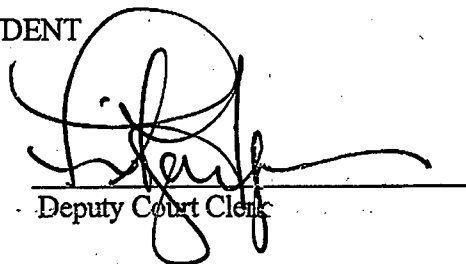
David Brian Morgan, DOC # 637673
Joseph Harp Correctional Center
PO BOX 548
Lexington, Oklahoma 73051

PETITIONER, PRO SE

and that a true and correct copy of the above and foregoing order was hand-delivered to:

Brant M. Elmore, Assistant District Attorney
Oklahoma County District Attorney's Office

COUNSEL FOR RESPONDENT


Deputy Court Clerk

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

ORIGINAL

STATE OF OKLAHOMA

JUN 14 2022

DAVID BRIAN MORGAN,

RICK WARREN
COURT CLERK

Petitioner,

29

MA-2022-472

v.

Case No. CF-2010-7695

THE STATE OF OKLAHOMA,

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

Respondent.

JUN 21 2022

**ORDER DISMISSING PETITIONER'S MOTION
TO DISMISS ALL CHARGES SET ASIDE CONVICTION**JOHN D. HADDEN
CLERK

This matter comes on for consideration of Petitioner's "Motion to Dismiss All Charges Set Aside Conviction," filed on April 12, 2022, and the State's motion to dismiss the same. Having reviewed the parties' filings, the Court finds that the State's motion to dismiss should be **GRANTED.**

The Court construes Petitioner's pleading as an application for post-conviction relief. "Excluding a timely appeal, the Uniform Post-Conviction Procedure Act (22 O.S.2011, § 1080 et seq.) encompasses and replaces all common law and statutory methods of challenging a conviction or sentence." *Jones v. State*, 1985 OK CR 99, ¶ 4, 704 P.2d 1138, 1140; *Webb v. State*, 1983 OK CR 40, ¶ 3, 661 P.2d 904, 905. Petitioner challenges his convictions within his "Motion." He explicitly requests relief under the "Post Conviction Rules." As such, the Court reviews Petitioner's pleading pursuant to the requirements of the Uniform Post-Conviction Procedure Act.

The Act provides that a post-conviction "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. . . . 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." 22 O.S. § 1081 (emphasis added). The District Court does not have authority to grant an applicant's request for relief where his application for post-conviction relief is not verified. *Dixon v. State*, 2010 OK CR 3, ¶ 7, 228 P.3d 531, 532-33. The application before this Court bears no form of verification. See 12 O.S. § 426; Rule 1.13(L), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18. App. (2022). Thus, it is subject to dismissal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Motion to Dismiss All Charges Set Aside Conviction is **DISMISSED.**

Dated this 14th day of June, 2022.CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

REC

NATALIE MAI
DISTRICT JUDGE

JUN 14 2022

JUN 21 2022

RICK WARREN COURT CLERK
Oklahoma CountyCLERK OF THE
APPELLATE COURTS

EXHIBIT 1

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2022, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to:

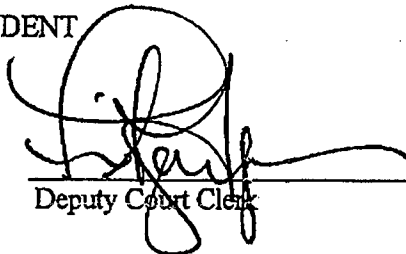
David Brian Morgan, DOC # 637673
Joseph Harp Correctional Center
PO BOX 548
Lexington, Oklahoma 73051

PETITIONER, PRO SE

and that a true and correct copy of the above and foregoing order was hand-delivered to:

Brant M. Elmore, Assistant District Attorney
Oklahoma County District Attorney's Office

COUNSEL FOR RESPONDENT


Deputy Court Clerk

General Docket
Seventh Circuit Court of Appeals

Court of Appeals Docket #: 22-2493

Docketed: 08/24/2022

Nature of Suit: 3530 Habeas Corpus

Termed: 11/09/2022

David Morgan v. USA

Appeal From: Southern District of Indiana, New Albany Division

Fee Status: Paid

Case Type Information:

- 1) prisoner
- 2) state
- 3) federalHabeasCorpus

Originating Court Information:

District: 0756-4 : 4:22-cv-00066-JMS-DML

Trial Judge: Jane Magnus-Stinson, District Court Judge

Date Filed: 05/11/2022

Date Order/Judgment:
05/13/2022

Date NOA Filed:
08/23/2022

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
PotentLinkToOpenCase				
	22-2493	<u>22-2756</u>	10/03/2022	10/07/2022

DAVID B. MORGAN (State Prisoner: #637673)
Petitioner - Appellant

David B. Morgan
[NTC Pro Se]
JOSEPH HARP CORRECTIONAL CENTER
P.O. BOX 548
Lexington, OK 73051

v.

UNITED STATES OF AMERICA
Respondent - Appellee

Bob Wood, Attorney
Direct: 317-226-6333
[COR LD NTC US Attorney]
OFFICE OF THE UNITED STATES ATTORNEY
Suite 2100
Ten W. Market Street
Indianapolis, IN 46204-3048

DAVID B. MORGAN,
Petitioner - Appellant

~~DAVID B. MORGAN~~ APPENDIX C