

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

LANCEY DARNELL RAY,

MAR - 3 2023

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2022-1067

STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner has appealed to this Court from a November 4, 2022, order of the District Court of Comanche County denying his third application for post-conviction relief in Case No. CF-2010-571. Petitioner was convicted by a jury of First Degree Murder and sentenced to life imprisonment. Petitioner's conviction was affirmed on direct appeal. *Ray v. State*, F-2012-538 (Okl.Cr. September 24, 2013) (not for unpublished). A review of the appeal record indicates this is Petitioner's third application for post-conviction relief filed with this Court in this matter.

In an order entered by this Court on June 11, 2018, the Court affirmed the order of the District Court of Comanche County denying Petitioner's second application for post-conviction relief in CF-2010-

571. *Ray v. State*, PC-2018-390 (Okl.Cr. June 11, 2018) The Court further noted that Petitioner had exhausted his State remedies regarding the issues raised in his application for post-conviction relief in Case No. CF-2010-571. See 22 O.S.2011, § 1086 and Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023).

All issues previously ruled upon are *res judicata*, and all issues not raised in the direct appeal and previous application for post-conviction relief, that could have been raised, are waived. 22 O.S.2011, § 1086; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. Petitioner has not established sufficient reason for not asserting his current grounds for relief in previous proceedings. *Id.* Except for his actual innocence claim, Petitioner's claims are waived. *Id.*

Petitioner argues that he is factually innocent. This Court's rules and cases do not procedurally bar the raising of factual innocence claims in a post-conviction application. *Slaughter v. State*, 2005 OK CR 6, ¶ 6, 108 P.3d 1052, 1054. The "actual innocence" exception is applicable only to factual innocence, where a petitioner can make a colorable showing he is actually innocent of the crime for which he is convicted. *Id.* Petitioner's assertions fail to meet this standard.

Petitioner alleges that medical records and radiology reports from Oklahoma University Medical Center and Reynolds Army Community Hospital are new reliable evidence. However, Petitioner fails to assert any facts or supporting documentation that the records are new evidence and could not have been raised as error in prior appeals. The post-conviction record lacks sufficient evidence to support a conclusion of factual innocence.

On February 2, 2023, Petitioner filed a Motion to Amend Pleading with the Applicable Standard of Review and a Motion for Direction of Judgement of Acquittal on the Basis of Evidentiary Insufficiency. Petitioner's Motion to Amend Pleading with the Applicable Standard of Review is **GRANTED**. Petitioner's Motion for Direction of Judgement of Acquittal on the Basis of Evidentiary Insufficiency is **DENIED**. On February 16, 2023, Petitioner filed a Motion to Approve Proposed Order. Petitioner's Motion to Approve Proposed Order is **DENIED**.

The order of the District Court of Comanche County denying Petitioner's third application for post-conviction relief in Case No. CF-2010-571 is, **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2023), the

MANDATE is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

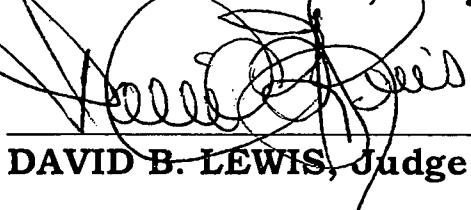
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

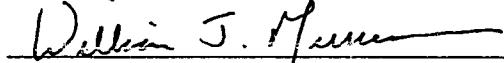
3rd day of March, 2023.


SCOTT ROWLAND, Presiding Judge

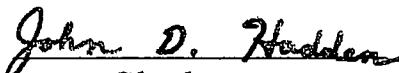

ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge


WILLIAM J. MUSSEMAN, Judge

ATTEST:


John D. Hadden
Clerk
PA

IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
Plaintiff,)
)
vs.) CF-2010-571
)
LANCEY DARNELL RAY,)
Defendant.)

STATE OF OKLAHOMA
Comanche County
FILED in the
Office of the Court Clerk

ORDER

NOV 04 2022
By KL Deputy

Now on this 4th day of November, 2022, the above entitled and numbered cause comes on before the undersigned Judge of the District Court upon the following matters filed by the Petitioner:

Subsequent Application for Post-Conviction Relief

Part A

1. Requesting the Court to notify the Professional Responsibility Commission of the Oklahoma Bar Association and the Oklahoma Attorney General regarding an alleged conspiracy between the former district attorney and his assistants, law enforcement officers and the forensic pathologist Yacoub;
2. Alleging that he was denied a direct appeal through no fault of his own;
3. That the doctrine of res judicata does not bar him from proceeding because no other prior proceeding had reached the merits of the claim that no analysis has been conducted to determine (1) whether the state district court applied the proper standard in admitting Dr. Yacoub's testimony, and (2) whether the court actually performed its gatekeeper role, deciding whether to admit or exclude testimony;

Part B

4. The Defendant/Petitioner alleges that he was denied relief on his original application for post-conviction relief due to the assistant district attorney's professional misconduct;
5. The Defendant/Petitioner alleges that appellate counsel was ineffective;

6. The Defendant/Petitioner alleges that he is actually innocent and alleges that new reliable evidence exists;

7. The Defendant/Petitioner alleges that he was denied protections of a grand jury and the 14th Amendment to the United States Constitution and that his counsel was ineffective for failing to raise those issues;

The Court having reviewed said Pleadings and the Response filed thereto, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner was found guilty by a jury of the offense of Murder in the First Degree on June 1, 2012 and was sentenced to life imprisonment with the Oklahoma Department of Corrections on June 19, 2012.

2. The Petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals and his conviction was affirmed on September 24, 2013.

3. The Petitioner filed an his first Application for Post-Conviction Relief on September 19, 2014 which was Denied on November 14, 2014 and Affirmed on March 18, 2015.

4. The Petitioner filed his second Application for Post-Conviction Relief on February 20, 2018 which was Denied on March 16, 2018 and Affirmed on June 11, 2018 with a finding of the Court of Criminal Appeals of the State of Oklahoma that he had **EXHAUSTED** his State remedies regarding the issues raised in his application for post-conviction relief in this case.

CONCLUSIONS OF LAW

1. Post conviction procedure is not intended to be a second direct appeal and the issues raised by the Petitioner are either issues the Oklahoma Court of Criminal Appeals has considered on direct appeal and/or on prior Applications for Post-Conviction Relief and are therefore res judicata or could have been raised on direct appeal but were not and are therefore waived.

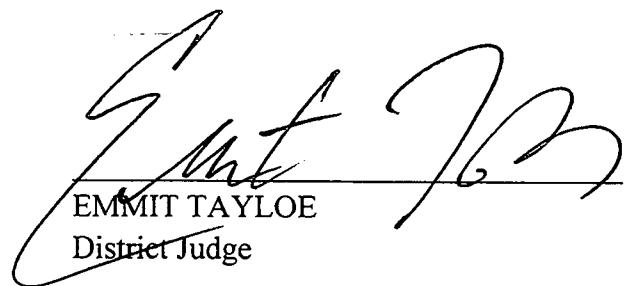
2. Allegations made by the Petitioner regarding ineffective assistance of appellate counsel fail to meet the burden placed on the Petitioner as established in Strickland v. Washington, 466 U.S. 668, Lockett v. State, 53 P. 418, Humphreys v. State, 947 P.2d 565 and Davis v. State, 123 P.3d 243.

3. The Court having reviewed the files and records herein, and being fully advised in the premises, finds and orders that this matter should be decided without oral argument and without further hearing(s) pursuant to Title 12, Oklahoma Statutes, Chapter 2-Appendix District Court Rule 4(h).

8. The Court concludes that there are no genuine issues of material facts raised by the Petitioner's pleadings, that this matter involves questions of law and does not require an evidentiary hearing or appointment of counsel and that this matter may be resolved as a matter of law pursuant to Title 22, Oklahoma Statutes, Section 1083 (b) and (c).

WHEREFORE, premises considered, it is ORDERED, ADJUDGED and DECREED that the Petitioner's Subsequent Application for Post-Conviction Relief should be and is hereby **DENIED**.

IT IS SO ORDERED THIS 4th day of November, 2022.



EMMIT TAYLOE
District Judge

(CLERK TO PROVIDE COPY TO EACH PARTY)

IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Plaintiff, STATE OF OKLAHOMA
Comanche County
FILED in the
Office of the Court Clerk

vs.

LANCEY DARNELL RAY,

By _____
Respondent.

NOV 22 2022
Deputy

CF-2010-571

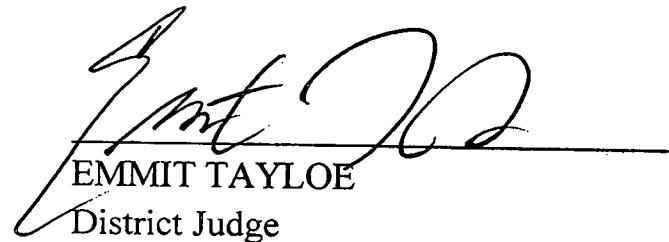
ORDER DENYING MOTION TO STAY EXECUTION OF THE COURT'S
INCOMPLETE ORDER DENYING SUBSEQUENT APPLICATION FOR
POST-CONVICTION RELIEF PENDING APPEAL

Now on this 22nd day of November, 2022, the above-styled cause comes on before the undersigned Judge of the District Court upon the Defendant's Motion to Stay. Having reviewed the Motion this Court Finds that:

1. The Court did not require the state to respond to the Application for Post-Conviction Relief filed herein by the Defendant for the reason that the court was satisfied, on the basis of the application and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, therefore said application was properly dismissed or denied.
2. Disposition of the application for post-conviction relief on the pleadings and record was proper because there is no genuine issue of material fact alleged to support an evidentiary hearing or the requirement for the state to respond.

WHEREFORE, premises considered, the Defendant's Motion to Stay should be and is hereby **DENIED**.

IT IS SO ORDERED THIS 22nd DAY OF NOVEMBER 2022.



EMMIT TAYLOE
District Judge

(CLERK TO PROVIDE COPY TO EACH PARTY)

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