

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

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

PAUL CURTIS PEMBERTON,)

Petitioner,)

v.)

STATE OF OKLAHOMA,)

Respondent.)

JUN - 3 2022

JOHN D. HADDEN
CLERK

No. PC-2021-1396

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner has appealed, pro se, to this Court from a November 3, 2021, order denying post-conviction relief in McIntosh County District Court Case No. CF-2004-57. In that case, Petitioner was found guilty after jury trial of Murder in the First Degree and Unlawful Possession of a Firearm After a Former Conviction of a Felony. Petitioner was sentenced to life without parole on Count 1 and life imprisonment on Count 2 which were ordered to run consecutively. Petitioner timely filed an appeal and his conviction was affirmed by this Court. *See Pemberton v. State*, No. F-2004-1256 (Okl.Cr. March 29, 2006)(unpublished).

The Honorable Brendon Bridges, Associate District Judge, denied Petitioner's claim that the State of Oklahoma did not have

jurisdiction to prosecute the Petitioner under *McGirt*. We Agree. 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.

Consideration of Petitioner's other claims for relief are procedurally barred. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569; *Walker v. State*, 1992 OK CR 10, ¶ 6, 826 P.2d 1002, 1004. We do not reach the merits of Petitioner's claims because the issues could have been raised in a direct appeal. 22 O.S.2011, § 1086; *Fowler*, 1995 OK CR 29, ¶ 2, 896 P.2d at 569. All issues that could have been raised in a previous direct appeal proceeding but were not are waived, and may not be the basis of a post-conviction application. *Id.* The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a petitioner with a second direct

appeal. *Id.* Petitioner's proposition of error could have been raised on direct appeal, and is thus waived. *Id.* He has not established sufficient reason for not asserting or inadequately raising his current grounds for relief in direct appeal proceedings.

As Petitioner has failed to establish that he is entitled to post-conviction relief, the order of the District Court of McIntosh County in Case No. CF-2004-57, denying Petitioner's application for post-conviction relief is **AFFIRMED**.

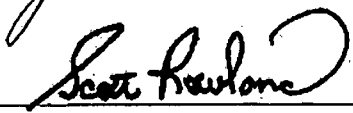
Petitioner filed a Motion for Order of Transfer of Records on December 10, 2021. Petitioner's request is **DENIED**.

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.

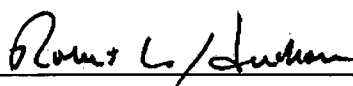
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

3rd day of June, 2022.



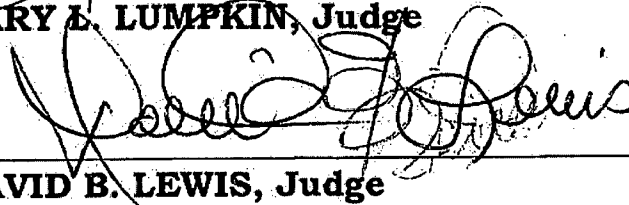
SCOTT ROWLAND, Presiding Judge



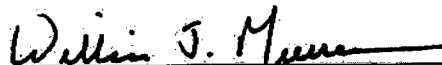
ROBERT L. HUDSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge

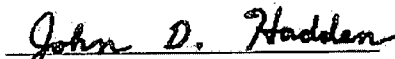


DAVID B. LEWIS, Judge



WILLIAM J. MUSSEMAN, Judge

ATTEST:



Clerk

PA