

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SCHUYLER SCARBOROUGH,)
)
 Petitioner,)
)
 v.)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

JAN - 9 2023

JOHN D. HADDEN
CLERK

No. PC-2022-711

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the order of the District Court of Sequoyah County denying him post-conviction relief in Case No. CF-2003-247. A jury convicted Petitioner of first-degree murder. He was sentenced to life imprisonment without the possibility of parole.

Petitioner represented himself at trial and he refused the appointment of direct appeal counsel. Despite insisting that he represent himself on appeal, no direct appeal was perfected. Petitioner has, however, filed pro se post-conviction applications. The District Court has denied those applications and we have affirmed the denials. See *Scarborough v. State*, PC-2006-360 (Okl.Cr. June 8, 2006) (not for publication); *Scarborough v. State*, PC-2007-98 (Okl.Cr. May 2, 2007) (not for publication); *Scarborough v. State*, PC-2007-905 (Okl.Cr.

Concerning Petitioner's jurisdictional challenge, we have recognized that an intervening change in the law which did not exist at the time of Petitioner's direct appeal or in previous post-conviction proceedings constitutes sufficient reason for not previously asserting an allegation of error. *VanWoundenberg v. State*, 1991 OK CR 104, ¶ 2, 818 P.2d 913, 915. Therefore, it was appropriate for the District Court to reach the merits of the claim.

Among the reasons the District Court denied relief on this claim was because Petitioner's conviction predated the *McGirt* decision. This was not an abuse of discretion. See *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ¶ 27-28, 497 P.3d 686, 691-92, *cert. denied*, 142 S.Ct. 757 (2022) (holding *McGirt* is not retroactive and does not void final state convictions). We decline Appellant's invitation to revisit our holding in *Matloff*.

As to Petitioner's remaining substantive claims, we agree with the District Court that they are procedurally barred because they either were, or could have been, presented earlier. See *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

issues raised in his petition in error, brief, and any prior appeals. See Rule 5.5, *supra*.

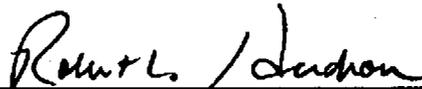
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

9 day of January, 2023.



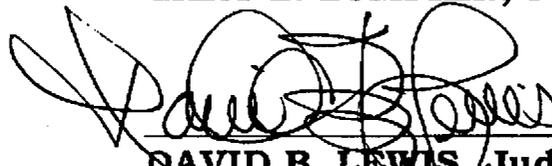
SCOTT ROWLAND, Presiding Judge



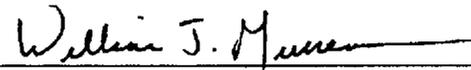
ROBERT L. HUDSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge

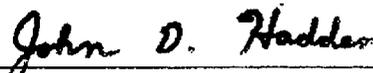


DAVID B. LEWIS, Judge



WILLIAM J. MUSSEMAN, Judge

ATTEST:



Clerk

PA