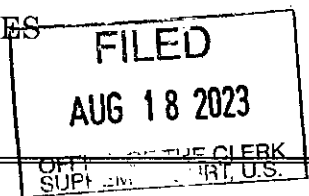


No. 23-5415

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Derrick Wayne Jackson-Stith Sr.

PETITIONER

vs.

State of Oklahoma ex rel.

Board of County Commissioners' of Tulsa County

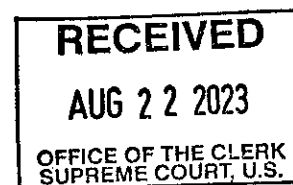
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

Derrick Wayne Jackson-Stith Sr.  
300 N. Denver Ave.  
Tulsa, Ok 74103  
918-808-8978



## QUESTION(S) PRESENTED

The Oklahoma Court of Criminal Appeals denied Mr. Jackson-Stith relief stating that the petitioner filed for Mandamus relief requesting dismissal under statutory law that excludes the idea of discretion. The commandment under 12 Okl. St. 1083 mandates and compels dismissal after no pleadings or action is taken for over a year, the petitioner has not had a hearing for over five years on this action. Mr. Jackson-Stith also requested a copy of the July 5<sup>th</sup>, 2018 preliminary examination transcripts, on July 28<sup>th</sup>, 2023 Honorable Judge Sharon promoted the welfare of indigent litigants and signed my order for the July 5<sup>th</sup>, 2018 transcripts. Furthermore, the transcripts were not documented and do not exist, this is plain error by the preliminary Judge James Keeley because Keeley overruled APD Marny Hill's objection for the defendant. The purpose of these transcripts will prove that the petitioner's prosecution was delayed without jurisdiction and constitutes a treasonable offense in the state of Oklahoma compelling removal of office under Okla. Const. Art. 15 Sec. 1. The State of Oklahoma and those indemnifying on behalf of the state and Board of County Commissioners' of Tulsa County shall properly be charged with violation said oath of office, attempting to process petitioner without due and legal process. The above-named respondents additionally manufactured interference with intrastate commerce disrupting a state and local business attempting to suppress statutory mandates that exclude the idea of discretion. This vested jurisdiction has the power to prevent injustice and reverse the adversarial treasonable order from the Oklahoma Court of Criminal Appeals declining jurisdiction without plausible claims to deny petitioner such relief, can this vested jurisdiction send an order to instruct the state to uphold all laws governing the State of Oklahoma that excludes the idea of discretion and compel each official to uphold their solemn Oath of Office to perform all functions, duties, and laws without sale denial, or delay.

The vested jurisdiction of the Supreme Court of the United States has a duty to enforce every inferior court in circumstances that benefits the welfare of all citizens, can this vested jurisdiction send an order granting the relief requested that was previously denied by the OCCA.

## LIST OF PARTIES

ADA Kenneth Elmore

Judge James Keeley

Stan Sallee

Karen Keith

Kelly Dunkerley

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## FEDERAL STATUTES AND RULES

28 U. S. C. § 1257(a)

42 U. S. C. § 1981

## STATE STATUTES AND RULES

5 Okl. St. Chap. 1., Appx. 3-A, Rule 3.8.

12 Okl. St. § 668.

12 Okl. St. § 1083.

12 Okl. St. § 1341.

12 Okl. St. § 1451.

19 Okl. St. § 28.

19 Okl. St. § 91.

19 Okl. St. § 215.16.

20 Okl. St. § 96.

20 Okl. St. § 106.4a.

20 Okl. St. Chap. 1., Appx. 2, Rule 14(B).

21 Okl. St. § 280.

21 Okl. St. § 345.

21 Okl. St. § 421.

## OTHER AUTHORITY

52 Am. Jur.2d Mandamus, § 1.



## **OKLAHOMA CONSTITUTION**

Okla. Const. Art. II § 6.

Okla. Const. Art. XV § 1.

Okla. Const. Art. XV § 2.

## **UNITED STATES CONSTITUTION**

U.S. Const. 14<sup>th</sup> Amendment.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The decision by the Oklahoma Court of Criminal Appeals denying Mr. Jackson-Stith Writ of Mandamus is reported online at the Oklahoma State Courts Network on July 24, 2023. See (Appendix A - Order Declining Jurisdiction Filed July 19<sup>th</sup>, 2023) The Oklahoma Court of Criminal Appeals manufactured an order that is deemed treasonable offense against their Oath of Office, the following Judges concurred exceeding the spirit and letter of their vested promises to perform all functions and duties of the United States and the State of Oklahoma.

Presiding Judge Scott Rowland

Vice Presiding Judge Hudson

Judge Lumpkin

Judge Lewis

Judge William Musseman

## JURISDICTION

Mr. Jackson-Stith petition for Mandamus relief to the Oklahoma Court of Criminal Appeals was denied on July 19<sup>th</sup>, 2023. Mr. Jackson-Stith invokes this Court's jurisdiction under the federal mandate 28 U.S.C. § 1257(a), Mr. Jackson-Stith duly filed this petition for a writ of Certiorari within ninety days of the Oklahoma Court of Criminal Appeals judgement.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### United States Constitution 14<sup>th</sup> Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Okla. Const. Art. II § 6. Courts of justice open—Remedies for wrongs—Sale, denial or delay:

The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

### 5 Okl. St. Chap. 1., Appx. 3-A, Rule 3.8:

#### The prosecutor in a criminal case shall:

Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

12 Okl. St. § 668. Procedure for Motion for Continuance:

A motion for a continuance, on account of the absence of evidence, can be made only upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be; and if it is for an absent witness, the affidavit must show where the witness resides, if his residence is known to the party, and the probability of procuring his testimony within a reasonable time, and what facts he believes the witness will prove, and that he believes them to be true. If thereupon, the adverse party will consent that on the trial the facts, alleged in the affidavit shall be read and treated as the deposition of the absent witness, or that the facts in relation to other evidence shall be taken as proved to the extent alleged in the affidavit, no continuance shall be granted on the ground of the absence of such evidence.

12 Okl. St. § 1083- Actions in Which No Pleadings Filed or Other Action Taken for One Year – Dismissal:

Any action in which no pleading has been filed or other action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.

12 Okl. St. § 1341- Court or Judge to Hear and Determine Cause – Discharge

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

19 Okl. St. § 28 - Official Neglect - Felony

Any election officer who shall be appointed, or commissioner, under the provisions of this act or the laws of Oklahoma, and who shall knowingly and willfully fail or refuse to perform required duties shall be guilty of a felony.

19 Okl. St. § 91 - Knowing and Willful Failure or Refusal to Perform Required Duties  
- Felony

Any election officer who shall be appointed or commissioned under the provisions of this article or the laws of Oklahoma, and who shall knowingly and willfully fail or refuse to perform required duties shall be guilty of a felony.

19 Okl. St. § 215.16 - Powers and Duties of District Attorney

The district attorney shall exercise and perform all the powers, duties and functions provided by law for the county attorney of each county, and shall appoint all of his assistants. Wherever in the Statutes of Oklahoma, in existence at the effective date of this act, reference is made to the county attorney, the district attorney, acting personally or by his duly appointed assistant, shall perform all the powers, functions and duties and be subject to removal from office and to all the obligations and liabilities and shall stand in the stead of the county attorney under such statutes.

20 Okl. St. § 106.4a - Access of Transcripts to Indigent Defendants or District Attorney - Cost

A transcript of the court reporter's notes, upon request and for the use of an indigent defendant or a district attorney, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a judge authorizes or orders a transcript of the court reporter's notes of any proceeding to be prepared at the expense of the court fund, or where a prosecuting attorney orders such a transcript at public or court fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a reporter shall prepare an original and two copies of the transcript so ordered and file it with the clerk of the trial court. The court reporter shall immediately notify the district attorney and the defendant of the date the transcript was filed. The district attorney and the defendant shall have access to the copies of the transcript on such terms as the trial court may impose. The chief judge may prescribe rules for access to or disposition of the copies of the transcript.

20 Okl. St. Chap. 1, Appx. 2, Rule 14:

Rule 14. Jury and Nonjury Terms in Calendar Year, Disposition Dockets, and Motion Dockets

A. Upon order of the Chief Judge of the district court judicial district or the Presiding Judge of the judicial administrative district, the district court shall hold at least one jury and one nonjury term and at least one disposition docket in each county each calendar year. **At the disposition docket, any action which is not at issue and in which no action has been taken for a year shall be dismissed as prescribed by 12 O.S.2001, § 1083,** subject to the proviso contained therein.

B. **Motions shall be heard in each county at least once every thirty days as prescribed by 20 O.S.2001, § 96.**

C. It shall be the duty of the Presiding Judge to enforce these statutes and this rule.

20 Okl. St. § 96- Jury Sessions - Motion and Demurrer Sessions - When and How Held

Jury sessions of the district court may be held at any time upon order of a chief judge or of the presiding judge of the judicial administrative district. **A session for the hearing and disposition of motions and demurrers shall be held in each county at least once every thirty (30) days, and any motion or demurrer that has been on file for at least five (5) days shall be placed on the docket.** The date or dates of regular sessions for the hearing of motions and demurrers shall be fixed by any of the judges of the district court unless the district judges of the district court judicial district shall prescribe otherwise, provided that a judge may hear any matter in any case assigned to him more frequently than provided herein.

21 Okl. St. § 280 - Willfully Disturbing, Interfering with or Disrupting State Business, Political Subdivisions, Agency Operations, or Employees

- A. It is unlawful for any person, alone or in concert with others and without authorization, to willfully disturb, interfere or disrupt state business or the business of any political subdivision, which includes publicly posted meetings, or any agency operations or any employee, agent, official or representative of the state or political subdivision.

- B. It is unlawful for any person who is without authority or who is causing any disturbance, interference or disruption to willfully refuse to disperse or leave any property, building or structure owned, leased or occupied by state officials or any political subdivision or its employees, agents or representatives or used in any manner to conduct state business or any political subdivision's business or operations after proper notice by a peace officer, sergeant-at-arms, or other security personnel.
- C. Any violation of the provisions of this section shall be a misdemeanor punishable by imprisonment in the county jail for a term of not more than one (1) year, by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
- D. For purposes of this section, "disturb, interfere or disrupt" means any conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others.

21 Okl. St. § 345 - Officer's Refusal to Perform Official Duties

Every county clerk, court clerk, judge of the district court, district attorney, county commissioner, or sheriff, who willfully fails or refuses to perform the duties of his or her office according to law, is guilty of a misdemeanor.

21 Okl. St. § 421 - Conspiracy - Definition - Punishment

A. If two or more persons conspire, either:

- 1. To commit any crime; or
- 2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or

**3. Falsely to move or maintain any suit, action or proceeding;** or

- 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or,
- 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.

B. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a misdemeanor unless the conspiracy is to commit a felony.

C. Conspiracy to commit a felony shall be a felony and is punishable by payment of a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary for a period not exceeding ten (10) years, or by both such fine and imprisonment.

## STATEMENT OF THE CASE

Petitioner, Mr. Stith, has formulated a sufficient burden of establishing 52 Am. Jur.2d Mandamus, § 1. Before the writ may issue, the petitioner must show, (1) a clear legal right; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and, (3) the adequacy of mandamus and the inadequacy of other relief. Draper v. State, 621 P.2d 1142, 1147 (Okl.1980).

This action was originally filed June 10<sup>th</sup>, 2015 and dismissed October 6<sup>th</sup>, 2105 see (OSCN CF-2015-2939); The above-mentioned felony CF-2018-2243 was re-filed June 1<sup>st</sup>, 2018 by the Tulsa County District Attorney's Office again approx. nine (9) days from exceeding the three (3) year statute of limitation mandate, at this present moment the case has been pending since the re-filing on June 1<sup>st</sup>, 2018 and the State of Oklahoma has not adjudicated this case and the record remains absent to diligently prosecute for over two (2) years and seven (7) months. The Tulsa County District Attorney's Office in its official capacity has not manufactured any sufficient issue to prosecute and adjudicate this felony for approx. eight (8) years from the rudiment of indemnifying on June 10<sup>th</sup>, 2015. ADA Elmore conducted the unauthorized preliminary examination on August 23<sup>rd</sup>, 2018 approx. one (1) month after ADA Elmore grossly exceeded the statutory mandate 12 Okl. St. § 668 at the previous July 5<sup>th</sup>, 2018 scheduled preliminary by requesting a verbal continuance without filing the mandatory affidavit to delay and continue to prosecute. Since the initial bind-over August 23<sup>rd</sup>, 2018 there has been one (1) one hearing on a Motion to Quash that was filed November 13<sup>th</sup>, 2018 and the hearing was conducted November 26<sup>th</sup>, 2018 where Judge Sharon Holmes adequately overruled the incompetent motion that the petitioner APD Marny Hill filed. After the November 26<sup>th</sup>, 2018 the record has been absent on behalf of the State of Oklahoma and their subordinate ADA Elmore since September 4<sup>th</sup>, 2020 that is approx. two (2) years and seven (7) months upon the filing of this mandamus. The State of Oklahoma has not placed any of the list of motions listed below on the felony docket for a hearing after five (5) days of being filed on public record and failed to compel a hearing on such objections listed below every thirty (30) days mandated by statutory commandments 20 Okl. St. Chap. 1, Appx. 2, Rule 14(B) that additional prescribes 20 Okl. St. § 96 within its contents and legislative intent.

These are the following list of Motions that have been left moot by the Tulsa County District Attorney's Office exceeding the mandates listed above:

1. **Motion to Strike Arrest Warrant w/ Prejudice filed 09/04/20**
2. **Motion to Dismiss Complaint w/ Prejudice filed 02/22/21**
3. **Motion to Dismiss Complaint w/ Prejudice filed 04/13/21**



4. Motion to Demurrer Action w/ Prejudice filed 09/30/21
5. Motion to Dismiss Void Action w/ Prejudice filed 10/08/21
6. Application to Set Aside Information w/ Prejudice filed 02/18/22
7. Motion to Dismiss filed 07/05/22
8. Motion to Dismiss filed 04/06/23

**Mandates Exclude the Idea of Discretion and ADA Elmore had a Plain Legal Duty to Perform a Hearing or Dismissal after one year:**

The State had a duty to compel a hearing every thirty (30) days under Rule 14(B) prescribed by 20 Okl. St. § 96, after each motion mentioned above that has been on file longer than five (5) days was not placed on the docket, this exceeded the 20 Okl. St. § 96 language and legislative intent to prevent delays. The motions listed above have not been overruled, sustained, or place on any docket after five (5) days of being on file.

The two (2) mandates mentioned above and below prescribed an intent to prevent oppressive delay from the Tulsa County District Attorney's Office.

This felony was previously filed June 10<sup>th</sup>, 2015 and dismissed October 6<sup>th</sup>, 2015. See (CF-2015-2939 OSCN at 1-3)

The State of Oklahoma re-filed June 1<sup>st</sup>, 2018 and conducted one (1) hearing on November 26<sup>th</sup>, 2018, Mr. Stith filed eight (8) dismissal's which, been on file longer than five (5) days and never placed on the docket for a hearing mandated by Rule 14(B) prescribed by 20 Okl. St. § 96.

This felony has been pending for five (5) years, and the state has not provided any issues, pleadings, or actions since November 26<sup>th</sup>, 2018, that is fifty-three (53) months that the state failed to file any motions. The 12 Okl. St. § 1083 prescribes that the felony shall be dismissed after one (1) year of failing to diligently prosecute, the state violated the following mandate exceeding the (1) one-year window:

The legislator's choice of the word "shall" is highly significant. It is usually given the meaning of "must", and is interpreted as implying a command or mandate. Sneed v. Sneed, 585 P.2d 1363(Okl.1978).

12 Okl. St. § 1083- Actions in Which No Pleadings Filed or Other Action Taken for One Year – Dismissal:

**Any action in which no pleading has been filed or other action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed** without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.

The word **shall** in ordinary usage means “must” and is inconsistent with a concept of discretion. *People v. Municipal Court for Los Angeles Judicial Dist., 149 C.A. 3d 951, 197 California Rptr. 204, 206. Black’s Law Dictionary Sixth Edition pg. 1375.*

**Title 12 Section 668 Excludes the idea of Discretion and is a Plain legal Duty for ADA Elmore to file an Affidavit:**

The state re-filed the above style case approx. (3) three days before the (3) three-year statute of limitation policy see (*Ex. 1 OSCN CF-2015-2939 at 1 and 5*) (*Ex. 2 CF-2018-2243 OSCN at 1-5*), preliminary hearing was scheduled on July 5<sup>th</sup>, 2018 a month prior to the filing an arraignment on approx. June 1<sup>st</sup>, 2018. ADA Elmore appeared at the scheduled preliminary on July 5<sup>th</sup>, 2018 and failed to file or present the requisites to delay this felony prosecution. The courts lost jurisdiction under *12 Okl. St. § 668* when Judge Keeley granted the verbal request for continuance without the mandatory affidavit for continuance stating the whereabouts of witnesses and the time frame of procuring the attendance of such witnesses. Special Judge Keeley never enforced this statute and had ample opportunity to exercise such jurisdiction, “an elementary principle is that ‘jurisdiction’ is the authority to hear and determine a cause.” See *A.T. & S.F. Ry. Co. v. Superior Court, Okl., 368 P.2d 475*. The allegations in the instant case was not re-filed until June 1<sup>st</sup>, 2018; the respondent was passed without any continuance on filed on record because ADA Kenneth Elmore delayed the desperately presumptive complaint and verbally argued that he (Kenneth Elmore) failed to locate witnesses at preliminary hearing on July 5<sup>th</sup>, 2018.

ADA Kenneth Elmore appeared at the scheduled preliminary on July 5<sup>th</sup>, 2018 and failed to file or present the requisites to continue such action, ADA Kenneth Elmore verbally asked for a continuance for a case because ADA Kenneth Elmore failed to locate such witnesses; Special Judge Keeley committed error authorizing the continuance that formulated the omission

to statutory policy 12 Okl. St. § 668. The statute commands the party requesting such continuance to produce an affidavit in good-faith, that policy was grossly neglected by Special Judge James Keeley and ADA Kenneth Elmore which is a violation of the XIV Amendment Due Process and arbitrary power towards Mr. Stith. ADA Kenneth Elmore must file an affidavit under oath stating the following evidence mentioned in 12 Okl. St. § 668 without this affidavit the state forfeited jurisdiction to delay this prosecution.

12 Okl. St. § 668. Procedure for Motion for Continuance:

A motion for a continuance, on account of the absence of evidence, **can be made only upon affidavit**, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be; and if it is for an absent witness, **the affidavit must show where the witness resides, if his residence is known to the party, and the probability of procuring his testimony within a reasonable time, and what facts he believes the witness will prove, and that he believes them to be true.** If thereupon, the adverse party will consent that on the trial the facts, alleged in the affidavit shall be read and treated as the deposition of the absent witness, or that the facts in relation to other evidence shall be taken as proved to the extent alleged in the affidavit, **no continuance shall be granted on the ground of the absence of such evidence.**

The legislator's choice of the word "shall" is highly significant. It is usually given the meaning of "must", and is interpreted as implying a command or mandate. Sneed v. Sneed, 585 P.2d 1363(Okl.1978).

Statute 1903, § 4504 (later changed to 12 Okl. St. § 668) governed in criminal as well as in civil cases. Rhea v. Territory, Okla. Crim. App., 3 Okla. Crim. 230, 105 P. 314 (1909)

Failure to file affidavit in support of motion for continuance is fatal unless procedural failure results in miscarriage of justice or constitutes substantial violation of defendant's rights. Ellis v. State, Okla. Crim. App., 795 P. 2d 107 (1990)

The purpose for requiring that a motion for continuance on account of absence of evidence can be made only upon affidavit is to keep such proceedings from getting out of hand and expanding into a hearing on the merits. Crosswhite v. State, Okla. Crim. App., 317 P. 2d 781(1957)

Denial of continuance was proper absent written motion with attached affidavit. Rogers v. State, Okla. Crim. App., 721 P. 2d 805 (1986)

Affidavit for continuance must conform to requirements of this section and set forth facts expected to be proven by absence witness with definiteness and certainty, in order that adverse party may admit or deny truth thereof. Sandite v. Brooks Flame-Spray, Inc., Okla., 403 P. 2d 471 (1965)

Request for continuance was fatally defective where defendant failed to file affidavit stating facts showing materiality of evidence expected to be obtained; absent affidavit, court was without discretion to grant continuance. Waterdown v. State, Okla. Crim. App., 798 P. 2d 635 (1990)

Trial court did not abuse its discretion in refusing a continuance because of absence of witnesses, where there was no evidence of whereabouts of absent witnesses, or of diligence to secure their attendance, and affidavit for continuance disclosed that their testimony would not like affect result. Foster v. State, Okla. Crim. App., 79 Okla. Crim. 183, 152 P. 2d 929 (1944)

On July 5<sup>th</sup>, 2018 ADA Kenneth Elmore acting in concert with Judge James Keeley exercised unauthorized jurisdiction acting in their official capacities committing treason against the United States and State of Oklahoma, fraud on the court, and interference of intrastate commerce of the business of the Tulsa County District Court. ADA Kenneth Elmore refused to perform all duties under oath of office failing to refrain from prosecuting manufacturing this treasonable conspiracy with Judge James Keeley for failing to supervise the court constitutionally. Judge Keeley failed to compel ADA Elmore to manufacture and file the continuance under 12 Okl. St. § 668 scheduling the action to be set for preliminary examination at a later date exceeding July 5<sup>th</sup>, 2018. ADA Elmore acted in concert with Judge James Keeley attempting to process plaintiff without due and legal process failing to file any affidavit of continuance prescribe by statute that excludes the idea of discretion. ADA Elmore under oath of office knowingly and willingly committed fraud on the court and treason against the United States and the State of Oklahoma manufacturing malicious prosecution, false imprisonment, and interference with intrastate commerce refusing to perform a plain legal duty that excludes the idea of discretion.

On July 5<sup>th</sup>, 2018 ADA Kenneth Elmore and Judge James Keeley acting in concert with the Board of County Commissioners' of Tulsa County Stan Sallee, Karen Keith, and Kelly Dunkerley acting in their official and individual capacities under their oath of office failed to perform all duties under Oklahoma law administrating delay without statutory authorization to proceed. Sallee, Keith, and Dunkerley acted in concert with Judge James Keeley violating their oath of office constituting perjury and a conspiracy and shall properly be charged with fraud on the court and treason against the United States and the State of Oklahoma conspiring to prosecute without due and legal process. All officials manufacturing malicious prosecution, false imprisonment, and interference with intrastate commerce attempting to force Mr. Stith to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion.

A county attorney has a personal discretion and responsibility as a minister of justice, and must act impartially in prosecuting and in refraining from prosecuting, and cannot become entangled with private interests or grievances connected with the private practice of law. Johns v. State, Okla. Crim. App., 15 Okla. Crim. 630, 179 P. 941 (1919)

County attorney has duty of safeguarding interest of state and public and determining when to commence criminal actions on behalf of state. Perry v. State, Okla. Crim. App., 84 Okla. Crim. 211, 181 P. 2d 280 (1947)

County attorney and board stand in same position as that of attorney and client generally, and the board has authority to determine when or how far to proceed and county attorney has authority to determine what legal steps and methods to follow in such procedure, but neither has authority to invade province of the other. Board of County Comm'rs of Tulsa County v. Morgan, Okla. 324 P. 2d 268 (1958)

**Mandates Exclude the Idea of Discretion under Oath of Office, ADA Kenneth Elmore and Special Judge James Keeley had a Plain Legal Duty Not to Violate Petitioner's Due and Legal Process:**

5 Okl. St. Chap. 1., Appx. 3-A, Rule 3.8:

The prosecutor in a criminal case shall:

Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

ADA Kenneth Allan Elmore was the Assistant District Attorney of Tulsa County District Attorneys' Office. ADA Elmore is legally responsible to perform all statutory mandates under oath of office following petitioner's privileges without committing treason, interfering with intrastate commerce of any prosecution, and manufacturing fraud on the court. ADA Kenneth Elmore failed to manufacture the mandatory affidavit of continuance under 12 Okl. St. § 668 and failed to perform 5 Okl. St. Chap. 1, Appx. 3-A, Rule 3.8 willingly and knowingly the court lacked jurisdiction to prosecute without the requisite to proceed ADA Kenneth Elmore refused to perform all duties under oath of office failing to file motion for continuance under 12 Okl. St. § 668 and manufacturing treason against the letter and spirit of the U.S. Const. Art. 3 Sec. 3 violating any oath of office is a treasonable offense according to the Supreme Court. Special Judge James Keeley and ADA Kenneth Elmore attempting to process Mr. Stith without due and legal process by failing to file any affidavit of continuance prescribe by statute that excludes the idea of discretion on July 5<sup>th</sup>, 2018. ADA Elmore under oath of office knowingly and willingly committed fraud on the court and treason against the United States and the State of Oklahoma manufacturing malicious prosecution, false imprisonment, and interference with intrastate commerce refusing to perform a plain legal duty that excludes the idea of discretion.

County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, and Duly Elected District Judge James Keeley shall properly be charged with a felony under 19 Okl. St. § 28 and 19 Okl. St. § 91, fraud on the court, and treason against the United States and the State of Oklahoma because officials exercised unwarranted jurisdiction to continue to prosecute exceeding the spirit and letter of 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1, Appx. 2, Rule 14(B) grossly neglecting due and legal process violating their Oath of Office. The above name officials knowingly and willfully manufactured malicious prosecution, false imprisonment, and interference with intrastate commerce attempting to force plaintiff to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion continuing to exercise jurisdiction exceeding 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1, Appx. 2, Rule 14(B) that renders all proceedings void.

ADA Kenneth Elmore shall properly be charged with a felony under 19 Okl. St. § 215.16, exercising their own power outside their oath of office conspiring to manufacture fraud on the court, and treason against the

United States and the State of Oklahoma because ADA Elmore exercised unwarranted jurisdiction to manufacture the conspiracy to exceed 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1., Appx. 2, Rule 14(B) and grossly neglecting due and legal process violating their Oath of Office. The above named officials knowingly and willfully manufactured malicious prosecution, false imprisonment, and interference with intrastate commerce attempting to force plaintiff to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion continuing to exercise jurisdiction exceeding 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1., Appx. 2, Rule 14(B) that renders all proceedings void.

The unlawful criminal charges 21 Okl. St. § 280 for willfully disturbing, interfering with and disrupting state business, political subdivisions, agency operations, or employees properly charges County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore acted in concert with the above named prosecuting officials. Attempted to interfere with the Tulsa County District Court official business that has strict guidelines under constitutional scrutiny following due and legal process. These officials interfered with the structure and commerce of the Tulsa County District Courts by conspiring and assisting in the manufactured malicious prosecution, false imprisonment, and interference with intrastate commerce attempting to force plaintiff to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion under continued to exercise jurisdiction exceeding 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1., Appx. 2, Rule 14(B). Special Judge James Keeley and ADA Kenneth Elmore is legally responsible for all for the supervision and due and legal process of the plaintiff because each official assisted and exercised unwarranted power and shall properly be charged with liability for punishment under 21 Okl. St. § 280 and a felony for not performing all duties under his oath of office violating 19 Okl. St. § 28.

County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore acting in their official capacity under oath of office refused to supervise and perform their oath of office constituting a misdemeanor. These officials swore to protect plaintiff's constitutional right's while prosecuting and committing plaintiff into custody and becoming a liability to the plaintiff by failing to ensure due and legal process of the

prosecution resulting in false imprisonment that is liable for punishment under Okla. Const. Art. 15 Sec. 2. All officials mentioned above failed to perform and protect all Oklahoma laws under oath of office resulting in perjury and committing a misdemeanor under 21 Okl. St. § 345 and formulated a felony for such failure to perform under 19 Okl. St. § 28 and 19 Okl. St. § 91. County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore had a plain legal duty to prevent the plaintiff from being prosecuted on void process after each official passed petitioner with the mandatory affidavit of continuance exceeding commandment 12 Okl. St. § 668 mandate that compels that no continuance shall be granted without the filing of an affidavit. County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore committed treason against the State of Oklahoma and the United States of America incarcerating and processing plaintiff without due and legal process without any motion for continuance to delay the prosecution. County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore acted in concert with the above named prosecuting officials and manufactured malicious prosecution, and interference with intrastate commerce attempting to force plaintiff to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion under continued to exercise jurisdiction exceeding 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1, Appx. 2, Rule 14(B). County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Duly Elected Special Judge James Keeley, and ADA Kenneth Elmore is legally responsible for all for the supervision and due and legal process of the plaintiff because each official assisted and exercised unwarranted power and shall properly be charged with liability and punishment committing a misdemeanor under 21 Okl. St. § 345 and formulated a felony for such failure to perform under 19 Okl. St. § 28 and 19 Okl. St. § 91.

#### 21 Okl. St. § 421 - Conspiracy - Definition - Punishment

A. If two or more persons conspire, either:

1. To commit any crime; or
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or
3. Falsely to move or maintain any suit, action or proceeding; or



4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or,

5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.

B. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a misdemeanor unless the conspiracy is to commit a felony.

C. Conspiracy to commit a felony shall be a felony and is punishable by payment of a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary for a period not exceeding ten (10) years, or by both such fine and imprisonment.

County Commissioner Stan Sallee, County Commissioner Karen Keith, County Commissioner Kelly Dunkerley, Special Judge James Keeley, and ADA Kenneth Elmore acted in concert committing a felony conspiracy under 21 Okl. St. § 421 by manufacturing malicious prosecution, and interference with intrastate commerce of the notorious Tulsa County District Court Business itself and attempting to force Petitioner to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion under continued to exercise jurisdiction exceeding 12 Okl. St. § 668, 12 Okl. St. § 1083, 12 Okl. St. § 1341, 20 Okl. St. Chap. 1, Appx. 2, Rule 14(B).

**Okla. Const. Art. II § 6. Courts of justice open—Remedies for wrongs—Sale, denial or delay:**

The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

This article in the *Okla. Const.* commands justice and rights to be administered without delay, and legislation gave Mr. Stith and every citizen of Oklahoma a speedy and certain remedy by default according to the language in Okla. Const. Art. II § 6 and the remedy of a preventing delayed prosecutions, the fact that no affidavit was filed stating good cause, the reason for procuring witnesses, and the window that witnesses can appear under 12 Okl. St. § 668 that statute authorizes mandatory dismissal and prevention of further jurisdiction without such instrument being filed or at least presented in court and then filed neither was done in this case, 12 Okl. St. § 668 is a pre-requisite administrative steps to protect delayed

prosecutions and oppressive harassing prosecutions, these are the following ordinances that shows good-faith shall not include corruption and fraud:

1. Oklahoma Court of Criminal Appeals can you please determine if there was a Motion for Continuance Affidavit filed prior to July 5<sup>th</sup>, 2018 to support legal cause mandated to delay this felony, the affidavit is the legal cause for continuance that the 12 Okl. St. § 1341 construes, otherwise I, Mr. Stith, shall be discharged upon the absence of such evidence. Can you exercise 12 Okl. St. § 1341 and hear and determine this motion, so I can get discharged immediately?

12 Okl. St. § 1341- Court or Judge to Hear and Determine Cause – Discharge

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, **and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.**

2. The language listed in the above statute 12 Okl. St. § 1341 is a commandment and excludes the idea of discretion, this commandment requires Mr. Stith to be discharged because there is no legal cause filed upon affidavit for a continuance to delay the prosecution on July 5<sup>th</sup>, 2018. The following statutory commandment 12 Okl. St. § 1341 is constructed with 12 Okl. St. § 668 when the circumstances is delayed or procrastinated in nature, the court has a duty to discharge Mr. Stith immediately with all due respect.

The word **shall** in ordinary usage means “must” and is inconsistent with a concept of discretion. People v. Municipal Court for Los Angeles Judicial Dist., 149 C.A. 3d 951, 197 California Rptr. 204, 206. Black’s Law Dictionary Sixth Edition pg. 1375.

3. The petitioner has been requesting a copy of the July 5<sup>th</sup>, 2018 preliminary transcripts to prove petitioner was passed without a continuance under 12 Okl. St. § 668; Petitioner was been able to get the Honorable Judge Sharon Holmes to attempt to manufacture the order that petitioner is constitutionally entitled to for the July 5<sup>th</sup>, 2018 transcripts. Judge Holmes send her bailiff Morgan Williams to produce the copy and no copy appeared to be recorded, the entire objection of the July 5<sup>th</sup>, 2018 proceeding was off the record. Petitioner wants the court to decide based off the preponderance of the record on the court docket appendices that show no continuance filed prior to July 5<sup>th</sup>, 2018. See (APPENDIX B – OSCN Court Docket CF-2018-2243)

20 Okl. St. § 106.4a - Access of Transcripts to Indigent Defendants or District Attorney - Cost

A transcript of the court reporter's notes, upon request and for the use of an indigent defendant or a district attorney, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a judge authorizes or orders a transcript of the court reporter's notes of any proceeding to be prepared at the expense of the court fund, or where a prosecuting attorney orders such a transcript at public or court fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a reporter shall prepare an original and two copies of the transcript so ordered and file it with the clerk of the trial court. The court reporter shall immediately notify the district attorney and the defendant of the date the transcript was filed. The district attorney and the defendant shall have access to the copies of the transcript on such terms as the trial court may impose. The chief judge may prescribe rules for access to or disposition of the copies of the transcript.

Questions presented to the OCCA

1. Can the Tulsa County District Attorney's Office exceed 12 Okl. St. § 668 failing to provide an affidavit of continuance to delay prosecution and fail to know the location of such witnesses, which excludes the idea of discretion? And does the language in 12 Okl. St. § 1341 compel the discharged of Mr. Stith when it states that the absence of a continuance the party shall be discharged?
2. Can the Tulsa County District Attorney's Office exceed 12 Okl. St. § 1083 by leaving the record moot for over two (2) years and seven (7) months without filing any issues or pleadings to delay prosecution? With this omission the statute utilized the word shall which requires dismissal can this jurisdiction compel legislation's intent in truth and in spirit?
3. Can the Tulsa County District Attorney's Office exceed 20 Okl. St. § 96 by failing to provide a hearing every 30 days after the petitioner files a motion and refuse to place petitioner's motion on docket after it being on file for 5 business days leaving it moot on record?
4. Can this vested jurisdiction send an order compelling Tulsa County District Courts to manufacture an order for the July 5<sup>th</sup>, 2018 preliminary-continuance transcripts under the 20 Okl. St. § 106.4a mandate?

This is for the petitioner to prove the record with transcripts and obtain immediate relief through mandamus.

The OCCA denied petitioner relief on July 19<sup>th</sup>, 2023 without manufacturing the Brady Material requested regarding transcripts for the July 5<sup>th</sup>, 2018 continuance of preliminary to prove that this action was entirely void for over five years and seven months.

Weeks after the denial an order declining jurisdiction Honorable Judge Sharon Holmes signs the order for the July 5<sup>th</sup>, 2018 transcript, Judge Holmes shortly after signing the order on record instructs the bailiff Morgan Williams to retrieve the copy of the proceeding, Miss Williams comes back into the court room and states that the proceeding and defendant's objection must have commenced off the record.

### **REASONS FOR GRANTING THE PETITION**

The request I made to the OCCA was competent to obtain jurisdiction, the courts said I have not satisfied the requirements of attaching a certified copy of being denied relief. The petitioner attached (APPENDIX B – OSCN Court Docket CF-2018-2243) to the Writ of Mandamus to prove that petitioner was denied relief, this vested jurisdiction can review the court docket and see that the state has been proceeding without jurisdiction to prosecute. This vested jurisdiction considers petitions that are effective and makes a huge impact on the Public and to society best interests, the legal process here is considered sham legal process, fraud on the court, interference with intrastate commerce, and treason for violating said Oath of Office under Constitutional scrutiny. This vested jurisdiction can set the record straight for indigent petitioner's that lack funds for undue influence and the status quo of relationships and friendships between parties who indemnify for the public and those who liberate the accused, this decision will stop insufficient prosecutions and prevent petitioners' such as Mr. Jackson-Stith from sitting moot in the County jail for over five (5) years and seven (7) months on void process.

The following officials exceeded their Oath of Office:

County Commissioner Stan Sallee,

County Commissioner Karen Keith,

County Commissioner Kelly Dunkerley,

Special Judge James Keeley,

ALL OFFICIALS NAMED ARE BOUND TO PERFORM THE STATUTES MENTIONED HEREIN ABOVE OR BE SUBJECTED TO THE FOLLOWING PENALTIES:

Okla. Const. Article 15 section 1 - Officers required to take oath or affirmation - Form

**§ 1. Officers required to take oath or affirmation - Form.**

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

"I, . . . . . , do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as . . . . . to the best of my ability."

Okla. Const. Article 15 section 2 - Administration and filing of oath - Refusal to take - False swearing

The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court, shall be filed in the office of the Secretary of State, and in case of other judicial and county officers, in the office of the clerk of the county in which the same is taken; any person refusing to take said oath, or affirmation, shall forfeit his office, and any person who shall have been convicted of having sworn or affirmed falsely, or having violated said oath, or affirmation, shall be guilty of perjury, and shall be disqualified from holding any office of trust or profit within the State. The oath to members of the Senate and House of Representatives shall be administered in the hall of the house to which the members shall have been elected, by one of the judges of the Supreme Court, or in case no such judge is present, then by any person authorized to administer oaths.

This felony was previously filed June 10<sup>th</sup>, 2015 and dismissed October 6<sup>th</sup>, 2015. See (CF-2015-2939 OSCN at 1-3)

The State of Oklahoma re-filed June 1<sup>st</sup>, 2018 and conducted one (1) hearing on November 26<sup>th</sup>, 2018, Mr. Stith filed eight (8) dismissal's which, has been on file longer than five (5) days and never placed on the docket for a hearing mandated by Rule 14(B) prescribed by 20 Okl. St. § 96.

This felony has been pending for five (5) years, and the state has not provided any issues, pleadings, or actions since November 26<sup>th</sup>, 2018, that is fifty-five (55) months that the state failed to file any motions. The 12 Okl. St. § 1083 prescribes that the felony shall be dismissed after one (1) year of failing to diligently prosecute, the state violated the following mandate exceeding the (1) one-year window.

On July 5<sup>th</sup>, 2018 ADA Kenneth Elmore and Judge James Keeley acting in concert with the Board of County Commissioners' of Tulsa County Stan Sallee, Karen Keith, and Kelly Dunkerley acting in their official and individual capacities under their oath of office failed to perform all duties under Oklahoma law administrating delay without statutory authorization to proceed. Sallee, Keith, and Dunkerley acted in concert with Judge James Keeley violating their oath of office constituting perjury and a conspiracy and shall properly be charged with fraud on the court and treason against the United States and the State of Oklahoma conspiring to prosecute without due and legal process. All officials manufacturing malicious prosecution, false imprisonment, and interference with intrastate commerce attempting to force Mr. Stith to pay fines and penalties by refusing to perform a plain legal duty that excludes the idea of discretion.

A county attorney has a personal discretion and responsibility as a minister of justice, and must act impartially in prosecuting and in refraining from prosecuting, and cannot become entangled with private interests or grievances connected with the private practice of law. Johns v. State, Okla. Crim. App., 15 Okla. Crim. 630, 179 P. 941 (1919)

County attorney has duty of safeguarding interest of state and public and determining when to commence criminal actions on behalf of state. Perry v. State, Okla. Crim. App., 84 Okla. Crim. 211, 181 P. 2d 280 (1947)

County attorney and board stand in same position as that of attorney and client generally, and the board has authority to determine when or how far to proceed and county attorney has authority to determine what legal steps and methods to follow in such procedure, but neither has authority to invade

province of the other. Board of County Comm'rs of Tulsa County v. Morgan,  
Okla. 324 P. 2d 268 (1958)

### CONCLUSION

The petitioner came to this vested jurisdiction to request that the injustice in Tulsa, Oklahoma by the Tulsa County District Attorney's Office shall be examined. This Certiorari will provide the citizens of this great state to be provided with examples equal protection that the 42 U.S.C. 1981 and Fourteenth Amendment promised, this is ensure that defendant has been provided a fair and impartial prosecution. The Oklahoma Legislation administrated these statutes that exclude the idea of discretion to manufacture contracts that provides each citizen of Oklahoma equal protection delegated by the constitution. The petitioner seeks immediate relief from this vested court for emancipation, the OCCA was the exhaustion the true injustice transpired with the State of Oklahoma. Petitioner was been able to get the Honorable Judge Sharon Holmes to attempt to manufacture the order that petitioner is constitutionally entitled to for the July 5th, 2018 transcripts. Judge Holmes instructed her bailiff Morgan Williams to produce the copy and no copy appeared to be recorded, the entire objection of the July 5th, 2018 proceeding was off the record. Petitioner wants the court to decide based off the preponderance of the record on the court docket appendices that show no continuance filed prior to July 5th, 2018. See (APPENDIX B – OSCN Court Docket CF-2018-2243)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Respect Wayne Jackson Att. Jr.*

Date: 8/17/23