

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

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STATE OF OKLAHOMA

FILED

BRENT ALLEN MORRIS,

JUN 14 2023

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2023-201

STATE OF OKLAHOMA,

Respondent.

**ORDER AFFIRMING DENIAL OF SECOND APPLICATION
FOR POST-CONVICTION RELIEF**

Petitioner, pro se, appeals the order of the District Court of Tulsa County denying him post-conviction relief in Case No. CF-2016-6899. A jury convicted Petitioner of numerous domestic-related offenses. He was sentenced to various terms of imprisonment including a twenty-five-year sentence for assault and battery with the intent to kill. The convictions and sentences were affirmed on direct appeal. *Morris v. State*, No. F-2018-551 (Okl.Cr. August 7, 2020) (not for publication). On February 7, 2022, the District Court denied Petitioner's first post-conviction application. We affirmed that decision in *Morris v. State*, No. PC-2022-327 (Okl.Cr. July 27, 2022) (not for publication).

On February 28, 2023, the District Court denied Petitioner's second post-conviction application, and the application that is the

subject of this appeal. We review the District Court's determination for an abuse of discretion. *State ex rel. Smith v. Neuwirth*, 2014 OK CR 16, ¶ 12, 337 P.3d 763, 766.

Petitioner raised seven claims before the District Court. In Proposition I he challenged appellate counsel's effectiveness for failure to raise various aspects of prosecutorial misconduct. In Proposition II he claimed that appellate counsel was ineffective for failing to raise claims related to an alleged conflict of interest concerning trial counsel. In Proposition III he asserted that he was deprived of his counsel of choice. In Proposition IV, Petitioner claimed that trial counsel was ineffective for failing to adequately investigate his case and call witnesses in his defense. In Proposition V he claimed the prosecutor engaged in misconduct. In Proposition VI he claimed one of this Court's rules is unconstitutional. Finally, in Proposition VII Petitioner claimed that cumulative error entitled him to a new trial.

The District Court declined to reach the merits of these claims because it found them to be procedurally barred. This was not an abuse of discretion. Post-conviction actions are not a substitute for a direct appeal. *Johnson v. State*, 1991 OK CR 124, ¶ 4, 823 P.2d 370, 372. Issues previously raised are barred by *res judicata*. *Fox v. State*,

1994 OK CR 52, ¶ 2, 880 P.2d 383-84. Issues that could have been previously raised, but were not, are waived. *Battenfield v. State*, 1998 OK CR 8, ¶ 4, 953 P.2d 1123, 1125. We agree with the District Court that Petitioner's claims either were, or could have been, presented earlier and are therefore not appropriate for consideration in a second post-conviction application.

Petitioner has failed to demonstrate that he is entitled to post-conviction relief. Therefore, the order of the District Court of Tulsa County denying Petitioner's second application for post-conviction relief in Case No. CF-2016-6899 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. Petitioner is placed on notice that his state remedies are deemed exhausted on all 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

14th day of June, 2023.

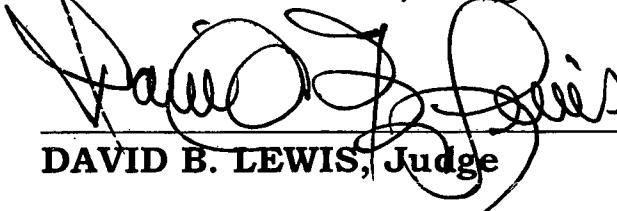

SCOTT ROWLAND, Presiding Judge

Robert L. Hudson

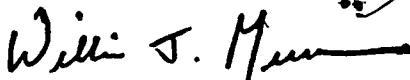
ROBERT L. HUDSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge



WILLIAM J. MUSSEMAN, Judge



ATTEST:

John D. Hadden

Clerk

PA