

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

PATRICK HENRY HILL II,

Petitioner,

v.

THE STATE OF OKLAHOMA

Respondent.

JUN - 2 2023

JOHN D. HADDEN
CLERK

No. PC-2023-244

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the denial of post-conviction relief by the District Court of Comanche County in Case No. CF-2002-121. On September 23, 2002, Petitioner entered a blind plea of guilty to first degree manslaughter. He was sentenced to life imprisonment. Petitioner did not attempt to withdraw his plea.

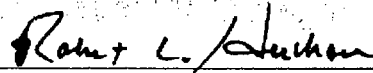
On April 24, 2013, Petitioner filed an application for post-conviction relief alleging: factual innocence, his plea was based on the advice of counsel; and the science behind "shaken baby" syndrome has evolved and there is every possibility that today he would be acquitted. The district court denied the application in an order filed September 24, 2021. We review the District Court's determination for an abuse of discretion. *State ex rel. Smith v.*

Petitioner has made no claim that he was denied an appeal through no fault of his own and has thus failed to demonstrate an abuse of discretion by the District Court. Accordingly, the order of the District Court of Comanche County in Case No. CF-2002-121 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.

2 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this day of June, 2023.

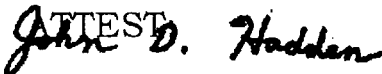

SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge


WILLIAM J. MUSSEMAN, Judge

TEST


Clerk

PA

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IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

PATRICK HENRY HILL, II STATE OF OKLAHOMA
Comanche County
FILED in the
Office of the Court Clerk

vs.

SEP 24 2021

CF-2002-121

STATE OF OKLAHOMA,

By

Deputy

Respondent.

ORDER

The Petitioner's Application for Post-Conviction Relief and Motion to Withdraw Guilty Plea, filed in the above-styled case on April 24, 2013, pursuant to Oklahoma Uniform Post-Conviction Procedure Act, were presented and considered by this Court in conjunction with two (2) evidentiary hearings conducted on November 18, 2013 and August 16, 2021. The Court, having reviewed the file and evidence presented, and having heard the arguments of counsel, enters the following Findings and Conclusions, to wit:

FINDINGS

On March 13, 2002, Petitioner was initially charged with Child Abuse.

On March 20, 2002, the State of Oklahoma (hereinafter State) amended the charge to Murder in the Second Degree.

On March 20, 2002, the Court approved the Oklahoma Indigent Defense System (OIDS) to represent the Petitioner.

On May 29, 2002, with his court appointed defense counsel, Mr. Don Gutteridge, Jr., present, Petitioner waived his right to a preliminary hearing on the amended charge of Murder in the Second Degree.

On June 6, 2002, with his defense counsel, Mr. Gutteridge, present, Petitioner was formally arraigned by District Judge Mark Smith on the amended charge of Murder in the Second Degree.

On September 5, 2002, the case was remanded back to Special District Judge Ken Harris for a preliminary hearing to be held on October 17, 2002.

On September 20, 2002, State amended the charge a second time to Murder in the First Degree.

On September 23, 2002, the Court ordered the Office of Chief Medical Examiner to turn over all records to defense counsel, Mr. Gutteridge, or his authorized agent, Russell Tate.

On October 17, 2002, the following all occurred: the State amended the charge a third time to Manslaughter in the First Degree; Petitioner waived his right to a preliminary hearing on the amended charge of Manslaughter in the First Degree with his defense counsel, Mr. Gutteridge, present; Petitioner entered a blind plea of guilty before District Judge Mark Smith to the amended charge of Manslaughter in the First Degree with his defense counsel, Mr. Gutteridge, present; and the Court ordered that a pre-sentence investigation be completed prior to sentencing.

On November 2, 2002, a pre-sentence investigation report by the Oklahoma Department of Corrections (hereafter DOC) was filed in the case recommending, inter alia, that Petitioner be denied probation and sentenced to a prison term prescribed by law.

On November 21, 2002, the Petition appeared for sentencing before Judge Smith with defense counsel, Mr. Gutteridge, present, and the Court sentenced Petitioner to Life with the Oklahoma Department of Corrections. Petitioner was advised of his rights to appeal and his signature appears on signed a document titled Notice of Right to Appeal acknowledging he only had ten (10) days in which to withdraw his guilty plea by filing a written application with the Court.

On November 26, 2002, the formal written Judgment and Sentence signed by counsel for both the State and the defense was filed in the case.

The Petitioner did not file an Application to Withdraw Guilty Plea within ten (10) days of sentencing.

On or about March 12, 2003, the Court received Petitioner's Pro Se Application for Judicial Review of Sentence pursuant to 22 O.S. 982a.

On March 13, 2003, the Court's Order Denying Petitioner's Pro Se Application for Judicial Review of Sentence was filed in the case, with a copy mailed to the Petitioner at the return address within DOC listed on the envelope submitting his application.

On April 24, 2013, the Petitioner filed an Application for Post-Conviction Relief along with a Motion for Evidentiary Hearing; a Motion to Withdraw Guilty Plea along with a Motion for Evidentiary Hearing; and a Brief in Support of Application to Withdraw Guilty Plea and Application for Post-Conviction Relief. Petitioner claims evidence has emerged since his guilty plea that justifies his request to withdraw his guilty plea and proceed to trial, or alternatively modify his sentence. Petitioner bases his assertions on post-plea developments in medical research and an improved understanding of "shaken baby syndrome" within the medical field.

The Petitioner's Brief in Support of Application to Withdraw Guilty Plea and Application for Post-Conviction Relief contained three (3) enclosures:

Enclosure 1 is a letter dated July 9, 2012, from Stephen K. Ofori, M.D., M.P.H., F.A.C.S, who is a neurologist working at Neurosurgery Centers of Southwest Oklahoma, Inc., located in Lawton, Oklahoma, Comanche County, State of Oklahoma;

Enclosure 2 is a University of Wisconsin Law School research paper titled Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting it Right; and

Enclosure 3 is an affidavit from Petitioner's defense counsel, Mr. Don J. Gutteridge, dated November 1, 2012, stating he advised Petitioner to plead guilty and accept a sentence to the amended charge of Manslaughter in the First Degree, but that if the medical evidence that is available now been available in 2002 he would not have done so. Mr. Gutteridge's affidavit further states that "It also appears from the statement of Dr. Ofori that Patrick Hill may have had a factual innocence claim in 2002."

On April 26, 2013, the State, through the Comanche County District Attorney's Office, filed a Response to Petitioner's Application for Post-Conviction Relief. The State asserts Petitioner's claims are without merit and were waived because he failed to raise them on direct appeal.

On June 18, 2013, Petitioner filed a reply to the State's response.

On September 12, 2013, Petitioner filed a Motion and Order Setting Evidentiary Hearing on November 18, 2013.

On November 18, 2013, an evidentiary hearing was held on the record. Dr. Ofori was the only witness who testified. The transcript of that proceeding indicates the Court, after receiving argument from counsel, directed the parties to submit proposed findings of fact and conclusions of law to the Court by January 15, 2014.

On January 16, 2014, a court minute was filed in the case indicating that for good cause shown the deadline for the parties to submit proposed findings of fact and conclusions of law to the Court was extended to April 2, 2014.

On January 31, 2017, just prior to the date of his retirement, District Judge Mark Smith entered a finding that due to the possibility of newly discovered evidence, further evidentiary hearing is necessary and should be set.

On November 12, 2020, after a series of continuances, a status conference was held and Petitioner's counsel confirmed there was no new evidentiary testimony to present; just supplemental testimony from Dr. Ofori. Additional time was granted for Petitioner's counsel to determine if Dr. Ofori would appear in person and testify or just provide supplemental testimony by affidavit.

On December 14, 2020, a status conference was held by phone due to COVID-19 and Petitioner's counsel announced Dr. Ofori would appear in person and testify. The Court then ordered that an evidentiary hearing be set by agreement of the parties after the re-opening of the Comanche Courthouse following any COVID-19 closures.

On May 5, 2021, an order setting evidentiary hearing on August 16, 2021 was entered per agreement of the parties.

On August 16, 2021, a second evidentiary hearing was held on the record. The Petitioner called Dr. Ofori who provided supplemental testimony in the case. No other witnesses were called. The parties were ordered to submit written findings of fact and conclusions of law to the Court by August 30, 2021.

On August 30, 2021, the Petitioner filed Proposed Findings of Fact and Conclusions of Law. The State did not provide any proposed findings of fact and conclusions of law.

CONCLUSIONS

22 O.S. 1080, in part, provides as follows:

Any person who has been convicted of, or sentenced for, a crime and who claims:...

(d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;...

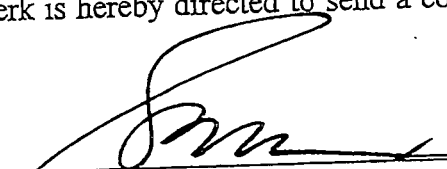
may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

The Petitioner's Application for Post-Conviction Relief and other documentation filed herein on April 24, 2013, *claims* there exists new evidence, not previously presented and heard.

Pursuant to 22 O.S. 1080, this Court has jurisdiction over Petitioner's application.

The Court, having reviewed the filings herein, along with the testimony of Dr. Stephen K. Ofori on November 18, 2013 and August 16, 2021, and having additionally heard the arguments of counsel, is not persuaded the evidence presented justifies Petitioner's request to have is conviction, which resulted from a voluntary plea of guilty, set aside. The Court is also not persuaded that Petitioner's sentence, which was imposed by the Court pursuant to a pre-sentence investigation, should be set aside or modified at this time.

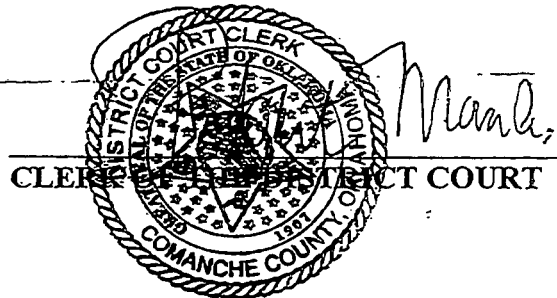
WHEREFORE, premises considered, it is **ORDERED, ADJUDGED AND DECREED** that Petitioner's Application for Post-Conviction Relief and Motion to Withdraw Guilty Plea are hereby denied, and the Comanche County Court Clerk is hereby directed to send a copy of this order to each of the respective parties herein.


JUDGE OF THE DISTRICT COURT

CERTIFICATE OF DELIVERY / MAILING

On the 24 day of September, 20 21, a true and correct copy of the above and foregoing Order was filed of record and hand-delivered to the Comanche County District Attorney's Office and also mailed to the Petitioner at the following address:

Ken Sue Doerfel
910 NE 75th Street
Lawton, Oklahoma 73507
ATTORNEY FOR PETITIONER



PROOF OF SERVICE

I HEREBY PROVE that on this 31th day of August 2023, I personally hand delivered to the OSR law library supervisor/legal mail custodian an original of my **PETITION FOR A WRIT OF CERTIORARI** for mail to:

Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

G. Drummond, A.G.
Office of Attorney General
State of Oklahoma
313 N.E. 21st
Oklahoma City, OK 73105

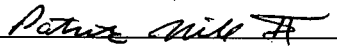
Attorney for Respondents

S. CT. RULE 29

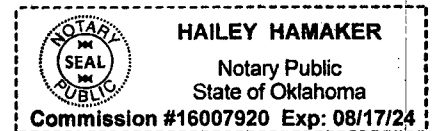
Petitioner, hereby, in compliance with t28 U.S.C. § 1746, invokes the mail box rule, and has this **31th day of August 2023** hand delivered his **PETITION FOR A WRIT OF CERTIORARI**, to the OSR law library supervisor/legal mail custodian—**first-class postage prepaid**—for mail to the above addresses.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on August 31, 2023.


PATRICK HENRY HILL II
OK DOC # 436084

Subscribed and sworn to before me this 31 day of August 2023




NOTARY PUBLIC

My Commission Expires: 8/17/24

