

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

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

**KENDALL DEAN MITCHELL,**

DEC 18 2023

**Petitioner,**

JOHN D. HADDEN  
CLERK

**v.**

**No. PC-2023-732**

**STATE OF OKLAHOMA**

**Respondent.**

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

Petitioner, pro se, has appealed to this Court from an order of the District Court of Washington County denying his second application for post-conviction relief in Case No. CF-1988-295 claiming he is entitled to relief pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In that case, Petitioner entered a plea of guilty to First Degree Murder and was sentenced to life in prison. Petitioner did not seek to withdraw his plea or otherwise timely appeal his conviction.

Petitioner has previously sought post-conviction relief in Case No. CF-1988-295 in the trial court arguing he is entitled to relief based on *McGirt*. The trial court denied Petitioner's request for relief in an order entered in the trial court. This Court affirmed the denial. *Mitchell v.*

*State*, PC-2020-675 (Okla. Cr. September 15, 2021) (not for publication).

Petitioner was fully afforded the opportunity for post-conviction relief in his previous application. Petitioner has failed to establish entitlement to any relief in this subsequent post-conviction proceeding. “In the interests of efficiency and finality, our judicial system employs various doctrines to ensure that issues are not endlessly re-litigated.” *Smith v. State*, 2013 OK CR 14, ¶ 14, 306 P.3d 557, 564. All issues that were previously raised and ruled upon in direct appeal proceedings or previous post-conviction proceedings are barred as res judicata, and all issues that could have been raised in those previous proceedings but were not are waived, and may not be the basis of a subsequent post-conviction application. 22 O.S.2011, § 1086; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. Post-conviction review is not an opportunity for a second chance to argue claims of error in hopes that doing so in a different proceeding may change the outcome. *Turrentine v. State*, 1998 OK CR 44, ¶ 12, 965 P.2d 985, 989. “Simply envisioning a new method of presenting an argument previously raised does not avoid the procedural bar.” *McCarty v. State*, 1999 OK CR 24, ¶ 9, 989 P.2d 990,

995. “Appellate jurisprudence was not created or designed to allow a person convicted of a crime to continually challenge a conviction with new assertions of error.” *Mayes v. State*, 1996 OK CR 28, ¶ 14, n.3, 921 P.2d 367, 372, n.3.

Petitioner’s propositions of error either were or could have been raised in his previous application for post-conviction relief, and are thus barred by res judicata or waived. 22 O.S.2011, § 1086; *Fowler*, 1995 OK CR 29, ¶ 2, 896 P.2d at 569. He has not established any sufficient reason for not asserting or inadequately raising his current grounds for relief in his previous application for post-conviction relief. *Id.* Therefore, the order of the District Court of Washington County denying Petitioner’s subsequent application for post-conviction relief in Case No. CF-1988-295 should be, and is hereby, **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.

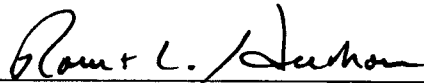
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

18<sup>th</sup> day of December, 2023.



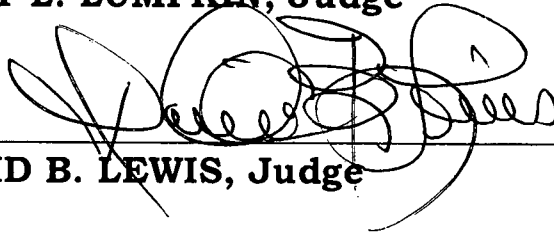
**SCOTT ROWLAND, Presiding Judge**



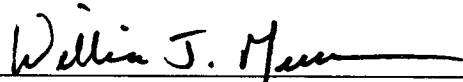
**ROBERT L. HUDSON, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**

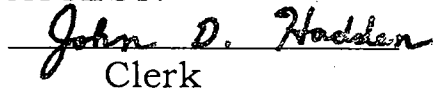


**DAVID B. LEWIS, Judge**



**WILLIAM J. MUSSEMAN, Judge**

ATTEST:



Clerk