

APPENDIX A

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JULIUS JEROME WALKER,

DEC 22 2023

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2023-609

STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF APPLICATION
FOR POST-CONVICTION RELIEF

J97 16 Petitioner, pro se, appeals from an order of the District Court of Muskogee County denying his second application for post-conviction relief in Case No. CF-2008-374.

On July 8, 2010, Petitioner entered a blind plea to Assault and Battery with a Dangerous Weapon, Child Neglect, Aggravated Assault and Battery, and Domestic Assault and Battery by Strangulation. Petitioner filed a motion to withdraw plea which was denied by the District Court. This Court denied in part and reversed in part. *Walker v. State*, C-2010-1129 (Okl. Cr. October 3, 2011) (not for publication). Petitioner's judgment and sentence became final on January 2, 2012.

On February 23, 2023, Petitioner filed with the District Court a Motion to Supplement Second Application and on May 12, 2023, a

Petition to Vacate/Modify Judgement. The District Court treated these motions as an application for post-conviction relief. On June 1, 2023, the Honorable Bret Smith, District Judge, denied Petitioner's application for post-conviction relief stating the claims are barred from further review by *res judicata* and waiver. We agree.

The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a petitioner with a second direct appeal. *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569; *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774, 775. A claim which could have been raised on direct appeal, but was not, is waived. *Fowler*, 1995 OK CR 29 at ¶ 2, 896 P.2d at 569; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384-85; *Johnson v. State*, 1991 OK CR 124, ¶ 4, 823 P.2d 370, 372. Claims which were raised and addressed in previous appeals are barred as *res judicata*. *Fowler*, 1995 OK CR 29 at ¶ 2, 896 P.2d at 569; *Walker v. State*, 1992 OK CR 10, ¶ 6, 826 P.2d 1002, 1004.

Reviewable issues in a subsequent application are strictly conscribed. 22 O.S.2011, § 1086; *Stevens v. State*, 2018 OK CR 11, ¶ 15, 422 P.3d 741, 746 ("There are even fewer grounds available to a petitioner to assert in a subsequent application for post-conviction

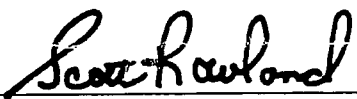
relief.”). The claims presented in the instant application either were or could have been, presented on direct appeal or in Petitioner’s previous post-conviction applications. Accordingly, the claims have been waived or are barred by *res judicata*.

Because Petitioner has failed to establish, he is entitled to post-conviction relief, the order of the District Court of Muskogee County in Case No. CF-2008-374 denying his second application for post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *supra*, 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

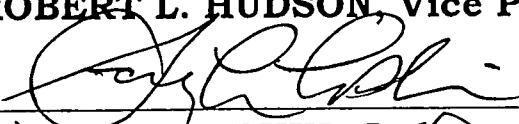
22nd day of December, 2023



SCOTT ROWLAND, Presiding Judge



ROBERT L. HUDSON, Vice Presiding Judge



GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

William J. Musseman
WILLIAM J. MUSSEMAN, Judge

ATTEST:

John D. Hadden
Clerk

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APPENDIX B

IN THE DISTRICT COURT IN AND FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

JULIUS JEROME WALKER,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

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Case No. CF-2008-0374

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~~ORDER DENYING PETITIONER'S SECOND~~
APPLICATION FOR POST-CONVICTION RELIEF

This matter comes on for consideration of the Petitioner's Application for Post-Conviction Relief, filed on February 13, 2017. The Court has reviewed the Petitioner's Application and Motion, the State's Response and the docket sheet in this matter.

The Court finds that the matter under consideration does not present any genuine issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony as the matter can be decided solely on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370. Nor does the Court need to appoint counsel for the Petitioner; nor is his presence required.

The Court finds that the relevant history provided in the State's Response to the Petitioner's Application and Motions to be accurate, and the Court will restate that history here.

HISTORY OF THE PETITIONER'S CASE

Petitioner was charged and convicted of six (6) counts of Assault and Battery with a Dangerous Weapon, four (4) counts of Child Abuse, one (1) count of Assault and battery with a Deadly Weapon, one (1) count of Aggravated Assault and Battery, and one (1) count of Domestic Assault and Battery by Strangulation. Petitioner, while represented by counsel, entered a blind plea of guilty. On November 10, 2010, Petitioner was sentenced to Life on all counts, all counts running concurrently with one another. On November 12, 2010, Petitioner filed a Motion to Appeal Life Sentence and a Motion to Withdraw Plea. A hearing was held on November 22, 2010, at which the motions were denied. Petitioner timely appealed. In an unpublished opinion in C-2010-1129, the Oklahoma Court of Criminal Appeals (OCCA) denied Petitioner's writ of certiorari in part and reversed Count XIII, Assault and Battery with a Dangerous Weapon, with instructions that it be dismissed.

On February 3, 2012, Petitioner filed an Application for Post-Conviction Relief, his first, alleging three propositions for relief. Each proposition alleged that appellate counsel was ineffective for not arguing various reasons that trial counsel was ineffective. The State filed a Response on February 16, 2012 and the Court issued an Order denying the Application on March 15, 2012. Petitioner timely appealed to the OCCA. In an unpublished opinion in PC-2012-320 the OCCA affirmed the denial of the Application.

On February 13, 2017, Petitioner filed his second Application for PCR raising three propositions for relief.

1. District Court erred in permitted trial counsel to represent Petitioner at the hearing on the Motion to Withdraw Plea;
2. Trial counsel was ineffective at the hearing on the Motion to Withdraw Plea;
3. Appellate counsel was ineffective.

ARGUMENTS AND AUTHORITIES

Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973 (citing Okla. Stat. tit. 22, § 1080 (2001)). Post-conviction review is not a substitute for direct appeal, nor is it intended as a means of providing a petitioner with a second direct appeal. *See Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774, 775–76; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384.

The Oklahoma Court of Criminal Appeals has long held that issues that were previously raised and ruled by upon by the Oklahoma Court of Criminal Appeals are procedurally barred from further review under the doctrine of *res judicata*; and issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review. *Logan*, 2013 OK CR 2 at ¶ 3, 293 P.3d at 973 (citing Okla. Stat. tit. 22, § 1080 (2001)); *King v. State*, 2001 OK CR 22, ¶ 4, 29 P.3d 1089, 1090; *Webb v. State*, 1992 OK CR 38, ¶ 6, 835 P.2d 115, 116, *overruled on other grounds*, *Neill v. State*, 1997 OK CR 41, ¶ 7 n.2, 943 P.2d 145, 148 n.2.

Additionally, the Post-Conviction Procedure Act further precludes claims that could have been raised “...in any other proceeding the applicant has taken to secure relief,” which includes not only an applicant’s direct appeal but also his or her prior post-conviction applications. *See Berget v. State*, 1995 OK CR 66, ¶ 6, 907 P.2d 1078, 1081–82 (holding that claims that could have been raised in a prior post-conviction application are waived).

Petitioner's propositions for relief have already been raised in prior Applications, and as such, are procedurally barred by the doctrine of *res judicata*. *See Logan*, 2013 OK CR 2 at ¶ 3, 293 P.3d at 973. To the extent that the proposition was not previously raised and ruled upon, the Court finds it is barred due to waiver, as Petitioner has provided no reason external to the defense which prevented it from being raised previously. *Id*; and see Title 22 O.S. § 1086. The Court finds no merit in Petitioner's assertion that his claims are not barred by *res judicata* or Section 1086.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that based upon the foregoing, Petitioner's Application for Post-Conviction Relief filed February 13, 2017 is **DENIED**.

SO ORDERED this 9 day of July, 2021.

A handwritten signature in black ink, appearing to read 'Bret Smith', is written over a horizontal line.

Bret Smith
DISTRICT COURT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**