

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

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

ROBERT RANDALL ZIEGLER,

FEB 28 2024

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2023-924

THE STATE OF OKLAHOMA,

Respondent.

**ORDER AFFIRMING DENIAL OF
SUBSEQUENT POST-CONVICTION APPLICATION**

Petitioner, pro se, appeals the order of the District Court of Tulsa County denying him post-conviction relief in Case Nos. CF-1977-686 - 691. A jury convicted Petitioner of two counts of first-degree rape, two counts of sodomy, first-degree burglary, and unauthorized use of a vehicle. On direct appeal, the convictions were affirmed but the sentences were modified because they were imposed pursuant to a habitual offender sentencing statute subsequently found unconstitutionally vague. *Ziegler v. State*, 1980 OK CR 23, 610 P.2d 251.

Petitioner next filed a petition for a writ of habeas corpus in federal district court where he argued that by failing to modify the sentences to the statutory minimum, this Court deprived him of his

App. A A1

statutory right to sentencing by jury. The federal court rejected Petitioner's claim that he was entitled to modification to the minimum, but found he was entitled to resentencing by a jury. Appellant did not appeal the court's order.

On April 3, 1984, following resentencing proceedings, the District Court imposed the sentences returned by a jury specifically empaneled to determine punishment. Petitioner, through counsel, appealed, taking essentially his second direct appeal raising issues relevant to resentencing. On December 23, 1988, this Court affirmed the sentences imposed. *See Ziegler v. State*, No. F-1984-667 (Okla. Cr. December 23, 1988) (not for publication).

Petitioner then filed a post-conviction application which the District Court denied. We affirmed that denial in *Ziegler v. State*, No. PC-1990-1363 (Okla. Cr. February 19, 1991) (not for publication). On September 18, 2023, Petitioner filed his second post-conviction application and the application that is the subject of this appeal. The District Court denied the application on October 23, 2023. 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.

As an initial matter, the District Court found that the application was time barred by 22 O.S.Supp.2022, § 1080.1. However, in *Hammon v. State*, 2023 OK CR 19, 540 P.3d 486, we concluded that the limitations period found in Section 1080.1 was not retroactive. Here, Petitioner's conviction was final prior to November 1, 2022 – the effective date of the new limitations period. Therefore, under *Hammon*, Petitioner had until November 1, 2023, to timely file his application. *Id.*, at ¶ 12, 540 P.3d at 489. The application at issue was filed on September 18, 2023, and was not untimely. The District Court did not rely solely on the limitations period to deny the application, it provided alternative reasons to support its conclusion.

Before the District Court, Petitioner claimed he had evidence supporting actual innocence. Post-conviction relief is appropriate when based on the discovery of “material facts, not previously presented and heard, that require vacation of the conviction or sentence in the interest of justice.” 22 O.S.2011, § 1080. However, “[t]hese facts must have been undiscoverable for trial or original appeal despite the exercise of due diligence.” *Romano v. State*, 1996 OK CR 20, 917 P.2d 12, 15. Leaving aside the unconvincing nature of the evidence, Petitioner has made no claim that the evidence could not

have been discovered earlier. The District Court did not, therefore, abuse its discretion when it denied relief on this claim. *See Gray v. State*, 1934 OK CR 129, 38 P.2d 967, 972 (“The defendant is required to set out ... facts showing that he used due diligence to procure the testimony.”).

Petitioner presented two additional claims to the District Court. He claimed, 1) resentencing by jury was error because he was entitled by law to have each of his sentences modified to the statutory minimum range of punishment, and 2) he was denied the effective assistance of appellate counsel following resentencing.

The District Court found these claims procedurally barred. This was not an abuse of discretion because Petitioner has not demonstrated why these claims could not have been presented either on direct appeal (following resentencing) or in his first-post-conviction application. *See Battenfield v. State*, 1998 OK CR 8, ¶ 4, 953 P.2d 1123, 1125 (issues that could have been previously raised, but were not, are waived).

The order of the District Court of Tulsa County denying Petitioner’s application for post-conviction relief in Case Nos. CF-1977-686-691 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the*

Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2024), 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

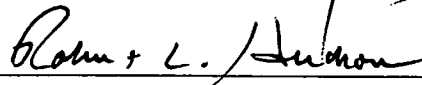
28 day of February, 2024.


SCOTT ROWLAND, Presiding Judge

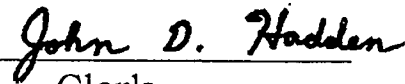

WILLIAM J. MUSSEMAN, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge


ROBERT L. HUDSON, Judge

ATTEST:


Clerk

PA

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

ROBERT RANDALL ZIEGLER,

Petitioner,

vs.

DISTRICT COURT
FILED

OCT 23 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

CRF-1977-686

CRF-1977-687

CRF-1977-688

CRF-1977-689

CRF-1977-690

CRF-1977-691

STATE OF OKLAHOMA,

Respondent.

**ORDER DISMISSING PETITIONER'S
APPLICATION FOR POST-CONVICTION RELIEF**

Petitioner's Application for Post-Conviction Relief comes before this Court for consideration under the Post-Conviction Procedure Act, 22 O.S. §§ 1080-1089. This Court has reviewed the Application, the State's Response, and the records in rendering its decision. This Court finds that the Application fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74. Also, this Court finds it unnecessary to appoint counsel for Petitioner. See 22 O.S. § 1082.

STATEMENT OF RELEVANT FACTS

According to the docket, the Petitioner was convicted of numerous charges of rape, sodomy, burglary, and unauthorized use of a motor vehicle. He is currently serving multiple 100-year sentences. The Oklahoma Court of Criminal Appeals affirmed Petitioner's judgment and sentence in each of his six cases. *Ziegler v. State*, F-1984-667 (Okla. Crim. App. Dec. 23, 1988)

(not for publication). The docket further indicates that the Oklahoma Court of Criminal Appeals has affirmed denial of post-conviction relief applications in at least two instances. *See Ziegler v. State*, PC-1990-1363 (Okla. Crim. App. Feb. 19, 2023); *Ziegler v. State*, PC-1994-1158 (Okla. Crim. App. Jan. 24, 1995).

Now, Petitioner presents the current Application for Post-Conviction Relief filed on September 18, 2023. In it, he alleges the following claims entitling him to relief:

1. Petitioner was denied due process, and equal protection of the laws when the judges abused their discretion and used erroneous facts to deviate from the controlling case laws; resulting in abuse of discretion and a fundamental miscarriage of justice.
2. Petitioner demonstrates a colorful claim of innocence to the sentences he received; and with the evidence herein, Petitioner could prove his innocence.
3. Petitioner was denied effective assistance of appellate counsel by appellate counsel's failure to cite and argue controlling case precedents relevant to the issues of resentencing; failures to argue judge's 'abuse of discretion' for using 'erroneous facts' to deviate from controlling case laws; and failed to raise original trial counsel's original direct appeal counsels', and resentencing counsel's errors resulting in prejudice.

ARGUMENT AND AUTHORITY

Oklahoma's Post-Conviction Procedure Act, 22 O.S. § 1080-1089, provides that the District Court may dismiss an application when it is satisfied "on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings." 22 O.S. § 1083(B). Accordingly, dismissal on the pleadings is improper where there exists a material issue of fact. *Id.* So, as in the case at bar, where a Petitioner fails to state a meritorious claim for relief and fails to present any material fact for this Court to consider, it should dismiss the application. Petitioner's Application is fit for dismissal.

I. PETITIONER'S CLAIMS ARE PROHIBITED BY 22 O.S. § 1080.1.

The Oklahoma Legislature has limited post-conviction relief under the Post-Conviction Procedure Act available to petitioners. Under 22 O.S. § 1080.1, petitioners have *one year* to initiate claims for post-conviction relief, and that timeline is calculated based upon the following:

A. A one-year period of limitation shall apply to the filing of any application for post-conviction relief, whether an original application or a subsequent application. The limitation period shall run from the latest of:

1. The date on which the judgment of conviction or revocation of suspended sentence became final by the conclusion of direct review by the Oklahoma Court of Criminal Appeals or the expiration of the time for seeking such review by the Oklahoma Court of Criminal Appeals;
2. The date on which the Governor revoked parole or conditional release, if the petitioner is challenging the lawfulness of said revocation;
3. The date on which any impediment to filing an application created by a state actor in violation of the Constitution of the United States or the Constitution of the State of Oklahoma, or laws of the State of Oklahoma, is removed, if the petitioner was prevented from filing by such action;
4. The date on which the constitutional right asserted was initially recognized by the United States Supreme Court, if the right has been newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review; or
5. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

B. Subject to the exceptions provided for in this section, this limitation period shall apply irrespective of the nature of the claims raised in the application and shall include jurisdictional claims that the trial court lacked subject-matter jurisdiction.

C. The provisions of this section shall apply to any post-conviction application filed on or after the effective date of this act.

22 O.S. § 1080.1 (effective Nov. 1, 2022). Petitioner's judgment and sentence became final when the Oklahoma Court of Criminal Appeals affirmed his judgments and sentences in 1989. Nothing

in the current Application addresses how he overcomes the procedural bars above. Petitioner's current Application is prohibited under 22 O.S. 1080.1, and the Court dismisses his Application on this basis.

II. PETITIONER'S CLAIMS ARE PROCEDURALLY BARRED.

Oklahoma's Post-Conviction Procedure Act "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. The Post-Conviction Procedure Act is not intended to provide a second appeal. *Richie v. State*, 1998 OK CR 26, 957 P.2d 1192. Accordingly, "[i]t is not the office of the Post-Conviction Procedure Act, 22 O.S.1991, § 1080 *et seq.* to provide a second appeal under the mask of post-conviction application." *Thomas v. State*, 1994 OK CR 85, 888 P.2d 522, 525. Finality of judgments is of the utmost importance in the post-conviction posture and should be stressed accordingly:

We will narrowly construe these amendments in accordance with the legislature's intent to honor the principle of finality of judgment. The Post-Conviction Procedure Act is not intended to provide a second appeal. We will consider neither issues raised on direct appeal and therefore barred by *res judicata*, nor issues waived because they could have been raised on direct appeal but were not.

Cannon v. State, 1997 OK CR 13, 933 P.2d 926, 928. This commandment is embodied in the Post-Conviction Procedure Act: "All grounds for relief available to the application under this act must be raised in the original, supplemental or amended application." 22 O.S. § 1086. The doctrine of *res judicata* procedurally bars issues which were already raised and ruled upon; the doctrine of waiver bars issues which could have been raised on review, but were not. *Id.*; *King v. State*, 2001 OK CR 22, ¶ 4, 29 P.3d 1089, 1090 (noting that petitioner's claims should have been raised prior to his guilty plea, but most certainly in a direct appeal, and, therefore, his claims were barred). *See also Webb v. State*, 1992 OK CR 38, ¶ 6, 835 P.2d 115, 116, overruled on other grounds (holding

that petitioner's third attorney was procedurally barred from raising an ineffective assistance claim in petitioner's *second* application for post-conviction relief).


The Legislature has provided a narrow exception, allowing for subsequent applications when there exists a "sufficient reason" why the grounds for relief were not asserted or inadequately asserted in the prior application. 22 O.S. § 1086. Thus, analysis turns to whether there exists a sufficient reason for not raising them or inadequately raising them in his previous application. Petitioner makes no showing whatsoever. Petitioner fails to overcome the procedural bar imposed by 22 O.S. § 1086. Therefore, the Court dismisses Petitioner's Application on this basis as well.

CONCLUSION

Petitioner's claims are both prohibited by 22 O.S. § 1080.1 and procedurally barred. The Court dismisses the Petitioner's Application for Post-Conviction Relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Application for Post-Conviction Relief is hereby **DENIED**.

SO ORDERED this 9 day of Oct, 2023.



DAWN MOODY
DISTRICT COURT JUDGE

C.O.

App. B B-5