

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

DOUGLAS O'NEAL,

JUL - 8 2024

Petitioner,

JOHN D. HADDEN  
CLERK

v.

No. PC-2024-419

THE STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF SUBSEQUENT APPLICATION  
FOR POST-CONVICTION RELIEF

Petitioner, pro se, appeals from an order of the District Court of Delaware County denying him post-conviction relief in Case No. CF-1992-176. In December 1993, Petitioner pled guilty to first-degree murder and first-degree burglary. Pursuant to a plea agreement he was sentenced to life without the possibility of parole and ten years of incarceration, respectively. He did not attempt to withdraw his pleas.

The district court has denied previous post-conviction applications filed by Petitioner and we have affirmed those denials. *See O'Neal v. State*, PC-1997-250 (Okl.Cr. April 11, 1997) (not for publication); *O'Neal v. State*, PC-2001-363 (Okl.Cr. May 31, 2001) (not for publication); *O'Neal v. State*, PC-2018-1038 (Okl.Cr. June 24, 2019) (not for publication).

App. A

On April 8, 2024, Petitioner filed the post-conviction application that is the subject of this appeal. The district court denied the application on May 17, 2024. We review the district court's decision for an abuse of discretion. *State ex rel. Smith v. Neuwirth*, 2014 OK CR 16, ¶ 12, 337 P.3d 763, 766.

The district court recharacterized Petitioner's pleading as a post-conviction application rather than a petition for a writ of habeas corpus. This was appropriate because the pleading challenged the judgment and sentence. *See 22 O.S.2011, § 1080* (Excluding a timely appeal, the Post-Conviction Procedure Act "encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.").

The district court otherwise declined to reach the merits of the Petitioner's claims. It did so because it found the claims either were, or could have been, presented earlier. This was not an abuse of discretion.

As a subsequent application, reviewable issues are strictly conscribed. *Rojem v. State*, 1995 OK CR 1, ¶ 7 n.6, 888 P.2d 528, 530 n.6 ("Subsequent applications for post-conviction relief can only be filed under certain, limited circumstances."). Because the claims

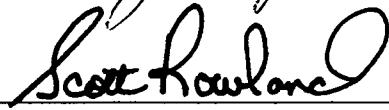
presented in the instant application either were, or could have been, presented earlier they are procedurally barred. *See Battenfield v. State*, 1998 OK CR 8, ¶ 4, 953 P.2d 1123, 1125 (issues that could have been previously raised, but were not, are waived); *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383-84 (issues previously raised are barred by *res judicata*).

Petitioner has failed to establish he is entitled to post-conviction relief. The order of the District Court of Delaware County in Case No. CF-1992-176, denying the subsequent application for post-conviction relief is **AFFIRMED**. 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 Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2024). 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

8<sup>th</sup> day of July, 2024.

  
SCOTT ROWLAND  
**SCOTT ROWLAND, Presiding Judge**

William J. Musseman  
**WILLIAM J. MUSSEMAN, Vice Presiding Judge**

Gary L. Lumpkin  
**GARY L. LUMPKIN, Judge**

David B. Lewis  
**DAVID B. LEWIS, Judge**

Robert L. Hudson  
**ROBERT L. HUDSON, Judge**

ATTEST:

John D. Hadden

Clerk

OA

FILED

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KARMA SAPP

DELWARE CO. COURT CLERK

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DOUGLAS O'NEAL, )  
AKA DOUGLASS O'NEAL., )  
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Petitioner, ) Case No: CF-1992-176  
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STATE OF OKLAHOMA, )  
Respondent. )

**ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF**

On May 10, 2024, this matter comes on for consideration of the Petition for Writ of Habeas Corpus Under 12 OK ST. ANN. § 1331 or Application for Post-Conviction Relief (“Application”), filed by Petitioner Douglas O’Neal (“Petitioner”) on April 8, 2024 and received by the District Attorney’s Office on April 17, 2024. Respondent State of Oklahoma filed a Response to Petitioner’s Application on May 14, 2024.

**STATEMENT OF THE CASE**

On December 2, 1993, Petitioner entered a plea of guilty pursuant to a plea agreement with the State in Case CF-1992-1756: Count I-Murder, in the First Degree, After Former Conviction of Felony, a Felony, in violation of 21 O.S. § 701.7; Count II-Burglary, First Degree, After Former Conviction of Felony, a Felony, in violation of 21 O.S. § 1451. The Court sentenced Petitioner to life without parole in the custody of the Oklahoma Department of Corrections (“DOC”) on Count I and to ten (10) years in the custody of DOC on Count II to be served consecutive to Count I. Petitioner did not file a direct appeal of this Judgment and Sentence.

On August 24, 1994, Petitioner filed his first Application for Post Conviction Relief. The Court denied this application and this denial was affirmed on appeal. *See O’Neal v. State*, No. PC-1997-250 (Okl.Cr. April 11, 1997 (unpublished)). Petitioner filed his second Application for Post

*APP. B*

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Conviction Relief “Coram Nobis” on December 11, 2000. The Court denied this application on February 26, 2001 and this denial was affirmed on appeal. *See O’Neal v. State*, No. PC-2001-363 (Okl.Cr. May 31, 2001) (unpublished). Defendant filed his third Application for Post Conviction Relief on August 17, 2015. The Court also denied this application. The Oklahoma Court of Criminal Appeals (“OCCA”) vacated the Court’s Order denying Petitioner Post-Conviction Relief because the Court lacked jurisdiction to consider this application since Petitioner failed to file a properly verified application for post-conviction relief. *See O’Neal v. State*, No. PC-2015-852, (Okl.Cr. Feb. 23, 2016). In response, the Court issued an Order which vacated its earlier denial and explained that no response was required to Petitioner’s deficient filing. Petitioner filed a Motion to Vacate or Set Aside Judgment and Sentence on December 22, 2017. The Court denied this motion on January 25, 2018 because it did not comply with the Oklahoma Code of Criminal Procedure since it was not a direct appeal and was not a properly verified application for post-conviction relief. On October 10, 2018, Petitioner filed his fourth Application for Post-Conviction Relief, requesting an appeal out of time. The Court again denied this application and this denial was affirmed on appeal. *See O’Neal v. State*, No. PC-2018-1038 (OklCr June 24, 2019)

Petitioner filed his current Application on April 8, 2024. Although Petitioner characterized his Application as a Petition for Writ of Habeas Corpus this title is inaccurate because Petitioner filed it in his county of conviction not in his county of confinement. Therefore, this Court addresses Petitioner’s Application in its proper procedural context as an Application for Post Conviction Relief rather than as a Habeas Corpus Petition.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

“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 22 O.S.2001, § 1086) (emphasis added). The Post-Conviction Procedure Act is neither a substitute for a direct appeal, nor a means for a second appeal. *See Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384; *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774, 775–76. The scope of this remedial measure is *strictly limited* and does not allow for litigation of issues available for review at the time of direct appeal. *See Castro v. State*, 1994 OK CR 53, ¶ 2, 880 P.2d 387, 388; *Johnson v. State*, 1991 OK CR 124, ¶¶ 3–4, 823 P.2d 370, 372. “Issues that were previously raised and ruled by upon by 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, ¶ 3, 293 P.3d at 973 (emphasis added).

**I. PETITIONER’S PROPOSITION OF ERROR RELATED TO HIS SUMMARY OF FACTS FORM ARE BARRED BY WAIVER AND *RES JUDICATA*.**

In his Application, Petitioner asserts various deficiencies related to his Summary of Facts Form, such as his claim that this form was not completed on his day of plea and sentencing and his claim that this form was not signed by the trial judge. See Application at 1-2. However, since Petitioner failed to raise any of these issues regarding irregularities in his Summary of Facts Form in a direct appeal although these issues could have been raised in such an appeal, these claims are barred by waiver. *See Castro*, 880 P.2d at 388; *Johnson*, 823 P.2d at 372. Petitioner provides no “sufficient reason” why he failed to previously assert these specific grounds for relief in a direct appeal or why these grounds were not raised or were inadequately asserted in his multiple prior applications for post-conviction relief. Therefore, his current assertions of these allegations are barred under the doctrine of waiver. *See Logan*, 293 P.3d at 973; 22 O.S. § 1086. Accordingly, the Court hereby denies this proposition of error for this reason.

Although Petitioner failed to raise his current argument related to irregularities in his Statement of Facts Form in the application for post-conviction relief he filed on August 17, 2015, he discussed this issue in response to the State's references to this form in its response to Petitioner's application. *See O'Neal v. State*, PC-2015-852, Brief in Support of Petition in Error at 12-13. Therefore, even if Petitioner's responsive discussion of this issue is currently argued in a slightly different manner than this earlier discussion, this proposition of error is also barred by *res judicata*. *See Logan*, 293 P.3d at 973; *Castro*, 880 P.2d at 390. Accordingly, the Court also denies Petitioner's proposition of error on this basis.

**II. PETITIONER'S PROPOSITIONS OF ERROR, RELATED TO THE ENAHNCEMENT OF HIS SENTENCE DUE TO HIS PRIOR CONVICTIONS IN ANOTHER STATE, ARE ALSO PROCEDURALLY BARRED BY WAIVER AND *RES JUDICATA*.**

Petitioner also asserted error related to the enhancement of his sentence because his prior conviction in another state actually involved a misdemeanor and because the trial court allegedly failed to properly rule on a defense motion to strike this former conviction. *See Application* at 2. However, Petitioner failed to previously raise these issues in a direct appeal although he could have done so. Since he provides no "sufficient reason" why he failed to previously assert these specific grounds for relief, these allegations are now barred under the doctrine of waiver. *See Logan*, 293 P.3d at 973; 22 O.S. § 1086. Accordingly, the Court also hereby denies these propositions of error for this reason.

Further, Petitioner previously asserted very similar arguments, regarding the allegedly erroneous enhancement of his sentence based on his prior conviction, in his Application for Post-Conviction Relief, filed on August 24, 1994, at pages 1-3,<sup>1</sup> in his Motion to Vacate or Set Aside

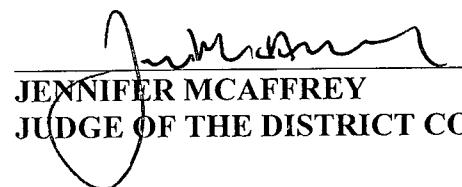
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<sup>1</sup> On appeal, the OCCA found Petitioner's arguments were waived when he failed to assert them in a direct appeal. *See O'Neal v. State*, PC 97-250, Order Affirming Denial of Post Conviction Relief at 3.

Judgment and Sentence, filed on December 22, 2017, at pages 1-2, and in his Application for Post-Conviction Seeking an Order Recommending Granting an Appeal Out of Time, filed on April 12, 2018, at pages 4-5, and 10.<sup>2</sup> Therefore, even if Petitioner's current proposition of error is argued in a slightly different manner in these filings, this proposition of error is still barred by *res judicata*. See *Logan*, 293 P.3d at 973; *Castro*, 880 P.2d at 390. Accordingly, the Court also denies Petitioner's proposition of sentence enhancement error on this basis.

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT** Petitioner's Fifth Application for Post-Conviction Relief is hereby **DENIED**.

SO ORDERED this 16 day of May, 2024.

  
JENNIFER MCAFFREY

JUDGE OF THE DISTRICT COURT

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<sup>2</sup> On appeal, the OCCA affirmed the District Court's denial of this same sentence enhancement argument in this application based on both waiver and *res judicata*. *O'Neal v. State*, PC-2018-1038, Order Affirming Denial of Subsequent Application for Post-Conviction Relief at 2-3.