

William S. Hurt III, #650799
D.C.C.C. N-217
129 Conner Rd.
Hominy, OK 74035

Clerk of the Court
Supreme Court of the United States
One 1 First St. NE
Washington, DC 20543-0001

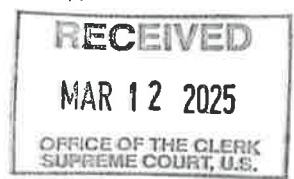
Re: William S. Hurt III, Petitioner v. Oklahoma, No. 24-6263; Notification Pursuant to Supreme Court Rule 15.8.

Dear, Clerk of the Court

Pursuant to United State Supreme Court Rule 15.8, Petitioner write to inform the court of a new development relevant to my pending petition for a Writ of Certiorari.

On February 26, 2025, The Oklahoma Supreme Court issued a new decision reaffirming Petitioner's conviction (See Attachment A). This ruling differs from the previous decision under review because it is no longer based on procedural prematurity but rather significant federal constitutional concerns. Specifically,

1. Denial of legal assistance during a critical stage— the Oklahoma Court of Criminal Appeals ruled that Petitioner failed to meet his burden in seeking Post-Conviction DNA testing, despite the fact that Petitioner was denied legal representation during a key evidentiary hearing. The lack of legal counsel at this stage impaired his ability to effectively present his case, raising serious due process concerns under the Fourteenth Amendment and conflicting with this court's precedent recognizing the importance of counsel in ensuring fundamental fairness. The hearing was at a critical stage in which the defendant's right may be lost, defense waived, privileges claimed or waived, or one in which the outcome of the case is substantially affected in some other ways. *Coleman v. Alabama*, 399 U.S. 1, 90 S. Ct. 1999 (1970);



Hamilton v. Alabama, 368 U.S. 52, 82 S. Ct. 157 (1961). Petitioner asserts he has a clear legal right to effective assistance of counsel in accordance with due process of law, as guaranteed by Fifth, Sixth, and Fourteenth Amendments of United States constitution and Article II sections 2, 7, and 20 of the Oklahoma Constitution.

Coleman v. Alabama, 399 U.S. 1, 90 S. Ct. 1999 (1970); *Hamilton v. Alabama*, 368 U.S. 52, 82 S. Ct. 157 (1961); *Randle v. State*, 1993 Ok Cr 47, 861 P.2d 314; *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814 (1963); *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830 (1985).

2. Mischaracterization of Petitioner's DNA testing request— The Oklahoma Court of Criminal Appeals concluded that Petitioner did not sufficiently identify specific items for DNA testing. However, this finding overlooks Petitioner submission of a property sheet listing all items for testing, which provide the necessary specificity. Post-Conviction DNA testing Pursuant to Okla. Stat. Tit. 22, § 1373.4 allows a defendant to request Post-Conviction DNA testing on biological evidence that could potentially provide new or exculpatory information. The Supreme Court in *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009), held that a defendant's constitutional right to due process does not guarantee access to post-conviction DNA testing. However, Osborne did not rule out the possibility of Post-Conviction DNA testing. Where state law provides such a remedy.

In *Schulp v. Delo*, 513 U.S. 298, 312-32, 115 S.Ct. 851, 860-69, 130 L.Ed 2d 808 (1995), the court emphasized that federal habeas corpus relief is availability of new exculpatory evidence is central to these claims, and courts have recognized that advancements in DNA technology provide a unique opportunity to reveal such

383, 133 S.Ct. 1924, 185 L.Ed 2d 1019 (2013), the justice system must be vigilant in providing the means to correct wrongful convictions, particularly when evidence available at the trial was insufficient to conclusively prove guilt or innocence. Allowing Post-Conviction DNA testing would serve not only the specific interests of the Petitioner, but also the broader interest in ensuring that the criminal justice system remains accurate and fair, denying access to DNA testing when biological evidence exists is incompatible with the constitutional principles of justice and fairness.

Furthermore, the Post-Conviction DNA testing, where available biological evidence exists, is a critical tool to ensure that convictions are based on reliable evidence. The court should grant Petitioner the opportunity to test item #9 Cellphone- found in the park near the scene and introduced at trial without any known ownership, #14 facial hair, #16 Scalp hair, # 17 left finger nail, #18 right fingernail, #20 oral swab and also items that were released to Homicide Detective C.K. Hill which is #8 Keychain, #32 contents from victim's pocket, and #33 ring. Petitioner requested these along with several other items listed in the property receipt for Tulsa County- Tulsa Police Department- Property Receipt Case No. 2010-1963. Petitioner was accused of being involved street brawl and presented the jury with an alibi defense at his jury in regards to his whereabouts at the time of the murder. Petitioner should not be denied based on procedural obstacles or overly stringent standards. As recognized in *Schlup v. Delo* and *Ex Parte Elizondo*, the discovery of new, potentially exculpatory evidence is a legitimate basis for Post-Conviction relief.

The new ruling not only shifts the basis for affirmance but also raises distinct and substantial federal constitutional issues that merits this court's attention. Given the implications of due process and the right to meaningful Post-Conviction DNA Relief, I respectfully request that the court consider this development in its disposition of my petition. If further briefing is necessary, I am prepared to provide additional information as directed by the court.

Dated: March 4, 2025.



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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

WILLIAM S. HURT, III,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 26 2025

JOHN D. HADDEN
CLERK

Nos. PC-2024-684

PR-2024-990

ORDER AFFIRMING DENIAL OF MOTION
FOR POST-CONVICTION DNA TESTING

Petitioner, pro se, appeals to this Court from an order of the District Court of Tulsa County denying his motion for post-conviction DNA testing in Case No. CF-2010-1963. On October 7, 2011, a jury convicted Petitioner of one count of First Degree Murder. Pursuant to the jury's verdict, Petitioner was sentenced to life imprisonment. This Court affirmed Petitioner's conviction. *See Hurt v. State*, No. F-2011-1057 (Okl. Cr. May 17, 2013) (not for publication).

On June 14, 2024, Petitioner, pro se, filed a motion for post-conviction DNA testing pursuant to the Postconviction DNA Act, 22 O.S.2021, §§ 1373.1-1373.7. The trial court held a hearing on the motion on August 14, 2024, and the Honorable Clifford Smith, Associate District Judge, in a thorough August 19, 2024, order,

denied Petitioner's request upon finding he had not demonstrated "[a] reasonable probability that [he] would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution." See 22 O.S.2021, § 1373.4(A)(1). Specifically, Judge Smith held that Appellant failed to satisfy Section 1373.4(A)(1) because Appellant never identified any piece of evidence that if tested could change the outcome in this case.

Appellant appealed the trial court's denial of his motion for DNA testing by filing a notice of post-conviction appeal in the trial court on August 27, 2024, and a petition in error with the Clerk of this Court on September 6, 2024. This Court affirmed the trial court's order denying post-conviction relief in an order filed with this Court's Clerk on October 4, 2024. *Hurt v. State*, No. PC-2024-684 (Okl. Cr. October 4, 2024) (not for publication). Petitioner filed a petition for extraordinary relief in the Oklahoma Supreme Court on October 25, 2024, complaining that this Court ruled upon his post-conviction appeal without allowing him the allotted sixty (60) days to file his brief. See Rule 5.2(C)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025). Petitioner included his post-conviction brief in the pleading filed in the Supreme Court. The

Oklahoma Supreme Court transferred the matter to this Court in an order filed on December 16, 2024. *Hurt v. State*, No. 122,612 (Okla. December 16, 2024) (not for publication). The matter was assigned this Court's Case No. PR-2024-990.

The Court has reviewed the record in this case and the concerns of Petitioner are well taken. To accomplish the necessary corrective action we order the **RECALL** of the mandate previously issued in this matter on October 4, 2024. The Clerk is directed to transfer all pleadings filed in Case No. PR-2024-990 to Case No. PC-2024-684 and Case No. PR-2024-990 is **DISMISSED**. We now consider the merits of the arguments raised by Petitioner in his post-conviction appeal brief.

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. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

In his first proposition of error, Petitioner argues Judge Smith abused his discretion when he denied Petitioner's request that he be appointed counsel for his post-conviction DNA hearing. There is no constitutional right to counsel in state post-conviction proceedings. *Hatch v. State*, 1996 OK CR 37, ¶ 50, 924 P.2d 284, 294-95; *see also Braun v. State*, 1997 OK CR 26, ¶ 33, 937 P.2d 505, 515. 22 O.S.2021, § 1082 states that counsel will only be provided in post-conviction proceedings "on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims." In *Grimes v. State*, 1973 OK CR 312, ¶ 8, 512 P.2d 231, we found the meaning of this statute clear in that the trial court first considers the merits of applicant's allegations and if it deems it sufficiently worthy, the trial court then appoints counsel to represent the applicant. In this case Petitioner has failed to establish Judge Smith abused his discretion when he denied Petitioner's request for counsel. Accordingly, Proposition I is without merit and denied.

In his remaining propositions of error, Petitioner contends items were not tested that could now prove probative if tested. Petitioner's brief offers nothing to support these claims and the record contains no support for the claims. These propositions are without merit.

Pursuant to Section 22 O.S.2021, § 1373.4(A) a court shall order DNA testing only if the court finds:

1. A reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution;
2. The request for DNA testing is made to demonstrate the innocence of the convicted person and is not made to unreasonably delay the execution of the sentence or the administration of justice;
3. One or more of the items of evidence the convicted person seeks to have tested still exists;
4. The evidence to be tested was secured in relation to the challenged conviction and either was not previously subject to DNA testing or, if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results; and
5. The chain of custody of the evidence to be tested is sufficient to establish that the evidence has not been substituted, tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence. For purposes of this act, evidence that has been in the custody of law enforcement, other government officials or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subsection absent specific evidence of material tampering, replacement or alteration.

Judge Smith found that all requirements for DNA testing had been satisfied except for the first—a reasonable probability that the results

of DNA testing, "if favorable," would have prevented Petitioner's conviction. The record sufficiently establishes that the district court's determination that Petitioner failed to satisfy Section 1373.4(A)(1) was neither clearly erroneous nor clearly against the logic and effect of the facts presented. Petitioner has failed to demonstrate that favorable DNA testing results would create a probability sufficient to undermine confidence in the outcome of his trial.

As a result, Petitioner has failed to demonstrate entitlement to DNA testing under the Postconviction DNA Act. Therefore, the order of the trial court denying Petitioner's motion for post-conviction DNA testing is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025), 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

26 day of February, 2025.



GARY L. LUMPKIN, Presiding Judge

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

~~DAVID B. LEWIS, Judge~~

Robert L. Hudson
ROBERT L. HUDSON, Judge

Scott Rowland
SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden

Clerk
PA