

APPENDIX

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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CEDRIC DWAYNE POORE,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 15 2024

JOHN D. HADDEN
CLERK

No. PC-2024-555

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals to this court from an order of the District Court of Tulsa County denying his application for post-conviction relief in Case No. CF-2013-865. Petitioner was convicted by jury of four counts of Murder in the First Degree and sentenced to consecutive terms of life imprisonment without the possibility of parole. This Court affirmed Petitioner's Judgment and Sentence on direct appeal. *Poore v. State*, No. F-2017-67 (Okla. Cr. September 12, 2019) (not for publication).

On August 18, 2023, Petitioner, pro se, filed his original application for post-conviction relief. Following a hearing, the Honorable Sharon Holmes, District Judge, denied the application in

a thorough order filed on July 3, 2024. Petitioner appeals from this order raising four propositions of error.

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, Appellant argues Judge Holmes abused her discretion by failing to appoint appellate counsel for his post-conviction DNA hearing. Because there is no constitutional right to counsel in state post-conviction proceedings, "a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings." *Hatch v. State*, 1996 OK CR 37, ¶ 50, 924 P.2d 284, 294-95 (quoting *Coleman v. Thompson*, 501 U.S. 722, 752 (1992)); see also *Braun v. State*, 1997 OK CR 26, ¶ 33, 937 P.2d 505, 515. Accordingly, this claim is denied.

In his second proposition of error, Appellant argues Judge Holmes abused her discretion by failing to submit evidence for further

DNA testing pursuant to 22 O.S.Supp.2013, § 1373.4(A)(1-5). Judge Holmes found Petitioner failed to satisfy the first and fourth requirements, to wit: (1) a reasonable probability that the results of DNA testing, "if favorable," would have prevented Petitioner's conviction, and (4) "if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results." The record sufficiently establishes that the district court's determination that Petitioner failed to satisfy Section 1373.4(A)(1) and (4) 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. Petitioner has not established he is entitled to DNA testing under the Postconviction DNA Act.

Finally, Petitioner raises claims of ineffective assistance of appellate counsel. Such claims may be raised for the first time on post-conviction, as it is usually a petitioner's first opportunity to allege and argue the issue. As set forth in *Logan*, post-conviction claims of ineffective assistance of appellate counsel are reviewed under the two-prong standard set forth in *Strickland v. Washington*,

466 U.S. 668 (1984). *Id.* Under *Strickland*, a petitioner must show both (1) deficient performance, by demonstrating that his counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-89. "A court considering a claim of ineffective assistance of counsel must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104 (2011)(quoting *Strickland*, 466 U.S. at 689).

At trial, during an in camera hearing, Susie Canady invoked her privilege against self-incrimination because she had made so many inconsistent statements, she feared placing herself in jeopardy of perjury charges if she testified. On direct appeal, Petitioner argued the trial court erred in failing to admit her statement under a hearsay exception. Canady's statement relayed that she witnessed the murders, and that Appellant was not present. Finding no plain error, this Court affirmed the trial court's decision disallowing admission of Canady's statement.

In his third post-conviction proposition of error, Petitioner argues appellate counsel was ineffective for failing to argue Susie Canady's statement exonerating him should have been admitted as an excited utterance. In his fourth proposition of error, Petitioner argues appellate counsel was ineffective for failing to argue Canady's statement inculpated herself. Judge Holmes found these claims meritless. We agree. *See Logan*, 2013 OK CR 2, ¶ 11, 293 P.3d at 975 ("The omission of a meritless claim, *i.e.*, a claim that was destined to lose, cannot constitute deficient performance; nor can it have been prejudicial.").

Petitioner has failed to establish he is entitled to post-conviction relief. Therefore, the order of the district court denying post-conviction relief, including his request 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. (2024), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

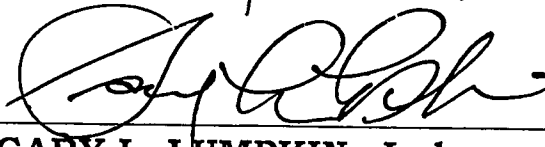
IT IS SO ORDERED.

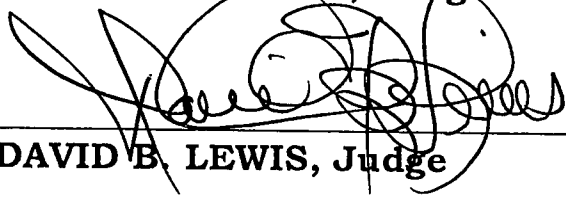
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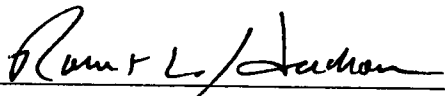
15th day of November, 2024.


SCOTT ROWLAND, Presiding Judge

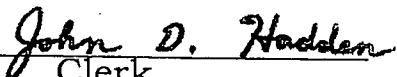

WILLIAM J. MUSSEMAN, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge


ROBERT L. HUDSON, Judge

ATTEST:


Clerk