

3-24-25

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED  
United States Court of App  
Tenth Circuit

March 20, 2025

Christopher M. Wolpert  
Clerk of Court

JAMES HASTEN FRANKLIN,

Petitioner - Appellant,

v.

STATE OF OKLAHOMA,

Respondent - Appellee.

No. 24-6225  
(D.C. No. 5:24-CV-00738-J)  
(W.D. Okla.)

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

Before MATHESON, PHILLIPS, and McHUGH, Circuit Judges.

James Hasten Franklin is an inmate at Oklahoma's Dick Conner Correctional Center. Proceeding pro se, he seeks a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition as untimely.<sup>1</sup> See 28 U.S.C. § 2253(c)(1)(A), (2). He also requests to proceed in forma pauperis (IFP) on appeal. Exercising our

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

<sup>1</sup> Because Franklin proceeds pro se, we liberally construe his filings, but we do not serve as his advocate. See *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

APPENDIX

A

jurisdiction under 28 U.S.C. § 1291, we grant his application to proceed IFP but deny his application for a COA.

## BACKGROUND

In 2020, an Oklahoma jury convicted Franklin on one count of shooting with intent to kill and one count of being a felon in possession of a firearm. He was sentenced to forty-five years' imprisonment for the shooting and ten years' imprisonment for possessing the firearm, to be served concurrently. On August 12, 2021, the Oklahoma Court of Criminal Appeals (OCCA) affirmed his conviction and sentence. Franklin did not file a petition for certiorari with the United States Supreme Court, so his direct appeal ended there.

About two years later, Franklin unsuccessfully sought post-conviction relief in state district court. He appealed, but the OCCA declined jurisdiction and dismissed the matter. He petitioned the Oklahoma Supreme Court for review, but that too failed.

On July 22, 2024, Franklin then filed his § 2254 petition in the United States District Court for the Western District of Oklahoma. In it, he collaterally attacked his conviction and sentence on the grounds that he was factually innocent, that he was denied a fair trial, and that his sentence was unjustly enhanced.<sup>2</sup> A magistrate judge recommended that the district court deny

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<sup>2</sup> His petition brought many specific claims, including: (1) that he received ineffective assistance of counsel when his trial counsel failed to object to the prosecution's definition of "reasonable doubt," (2) that the prosecution

*(footnote continued)*

Franklin's petition as untimely. Franklin objected to the recommendation, but he did not object to the magistrate judge's dispositive, timeliness analysis. The district court adopted the recommendation, dismissed the petition with prejudice, and denied Franklin a COA on the ground that no reasonable jurist would debate that the petition was procedurally time-barred. Franklin timely appealed, seeking a COA and to proceed IFP.<sup>3</sup>

## DISCUSSION

As a habeas petitioner in state custody, Franklin must obtain a COA to appeal the dismissal of his § 2254 petition. *See* § 2253(c)(1)(A). To obtain a COA, he must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right[.]" *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). But because the district court dismissed his petition on timeliness grounds, he must also show "that jurists of reason

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engaged in misconduct when defining "reasonable doubt," (3) that potential jury members were excluded from the jury based on race, (4) that he was factually innocent because he acted in self-defense, (5) that the prosecution's incomplete investigation deprived him of exculpatory evidence, (6) that the sentencing court enhanced his sentence based on an illegal application of Oklahoma law, and (7) that he received ineffective assistance of appellate counsel because his trial counsel and appellate counsel were from the same office.

<sup>3</sup> After Franklin appealed the district court's denial of his § 2254 petition, he filed a motion for rehearing that the district court construed as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b). The district court denied the motion, and Franklin did not appeal that order. So the scope of this appeal is limited to the district court's dismissal of the petition and entry of judgment. *See* Fed. R. App. P. 4(a)(4)(B)(ii).

would find it debatable whether the district court was correct in its procedural ruling.” *Id.* We need not address the constitutional question if reasonable jurists would not debate the resolution of the procedural one. *See id.* at 485. And here, reasonable jurists would not debate that Franklin’s petition was procedurally time-barred.

A § 2254 petition generally must be filed within the statutory one-year limitations period. § 2244(d)(1). This limitations period begins to run from the latest of four possible accrual dates. *Id.* For Franklin, the one-year limitations period accrued on “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]”<sup>4</sup> § 2244(d)(1)(A). Because Franklin did not file a certiorari petition with the United States Supreme Court in his direct appeal, his conviction became final on November 10, 2021. *See Harris v. Dinwiddie*, 642 F.3d 902,

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<sup>4</sup> None of § 2244(d)(1)’s alternative accrual dates are implicated here. As the magistrate judge noted, Franklin’s petition offhandedly asserted that he could not file for post-conviction relief because he was “prohibited” from getting transcripts. R. vol. I, at 30, 53. A liberal construction of that allegation somewhat implicates § 2244(d)(1)(B), which starts the limitations period after an illegal, state-created “impediment” to filing is removed. But Franklin failed to explain who “prohibited” him from getting the transcripts, how he was so prohibited, what transcripts he sought, how their absence prevented him from filing, what steps he took to try to get them, or when he eventually got them. *See* R. vol. I, at 30. So § 2244(d)(1)(B)’s impediment-based accrual date does not apply. *See Clark v. Oklahoma*, 468 F.3d 711, 714 (10th Cir. 2006) (holding that § 2244(d)(1)(B) was inapplicable because the petitioner “failed to explain why the documents held by the state were necessary to pursue his federal claim”).

906 n.6 (10th Cir. 2011) (noting state prisoners have ninety days to petition for a writ of certiorari). The limitations period began to run the next day and expired one year later, on November 11, 2022. *See id.* Franklin filed his habeas petition about twenty months after that date had passed. So, as the magistrate judge concluded, his petition was untimely.<sup>5</sup> Franklin’s COA application does not challenge that conclusion.

Though a § 2254 claim “asserted outside the limitations period is generally time-barred,” *Pacheco v. Habti*, 62 F.4th 1233, 1240 (10th Cir. 2023), a petitioner may nonetheless file outside the limitations period if equitable tolling or an equitable exception applies, *see McQuiggin v. Perkins*, 569 U.S. 383, 391–92 (2013) (explaining that equitable tolling extends the limitations period, and an equitable exception overrides the limitation). No such equitable relief applies to the untimely petition here.

First, Franklin has not met his burden for equitable tolling. To do so, he needed to show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.”

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<sup>5</sup> Though Franklin filed a state petition for post-conviction relief, that petition was filed long after the limitations period had expired. So he is not entitled to statutory tolling under § 2244(d)(2). *See* § 2244(d)(2) (“The time during which a *properly* filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under [§ 2244].” (emphasis added)); *Clark*, 468 F.3d at 714 (“Only state petitions for post-conviction relief filed within the one year allowed by [§ 2244(d)(1)] will toll the statute of limitations.”).

*Id.* at 391 (internal quotation marks omitted); *see Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (“An inmate bears a strong burden to show specific facts to support [equitable tolling.]” (internal quotation marks omitted)). In his § 2254 petition, Franklin gave no adequate explanation for his untimeliness and made no argument that he was entitled to equitable tolling. Likewise, his COA application does not argue that he was entitled to equitable tolling, and our independent review of the record has revealed no grounds for providing it.

Second, Franklin has not met his burden for the actual-innocence equitable exception to the limitations period. Under that exception, otherwise known as the fundamental-miscarriage-of-justice exception, “a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . notwithstanding the existence of a procedural bar to relief.” *McQuiggin*, 569 U.S. at 392. The exception “applies to a severely confined category: cases in which new evidence shows it is more likely than not that no reasonable juror would have convicted the petitioner.” *Id.* at 395 (cleaned up).

Though Franklin maintains that he is innocent of his crimes of conviction, he highlights no persuasive evidence supporting that claim. He suggests that the prosecution would have discovered “exculpatory evidence” had its investigation not been “shoddy.” Op. Br. at 2 (asserting that the police did not take fingerprints or process a box of butter with blood stains on it). But Franklin apparently made that argument in trial court. *Id.* (citing trial-court transcript). Beyond the rehashed possibility of exculpatory evidence, nothing

new in his petition credibly suggests that he is innocent of his convictions. So he has not met the demanding burden to show that his is one of those rare cases warranting our equitable disregard of the statute of limitations. *See McQuiggin*, 569 U.S. at 386 (cautioning that “tenable actual-innocence gateway pleas are rare” and that the actual-innocence burden is seldom met).

Without Franklin showing that he deserves equitable relief from the one-year limitations period, the district court was correct to dismiss his habeas petition as time-barred. Reasonable jurists “could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Slack*, 529 U.S. at 484.<sup>6</sup>

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<sup>6</sup> We recognize that Franklin failed to make timely objection to the magistrate judge’s recommendation that his § 2254 petition was untimely. That failure may have constituted a firm waiver of appellate review. *See Johnson v. Reyna*, 57 F.4th 769, 778 (10th Cir. 2023) (“The failure to make timely objection to the magistrate’s findings or recommendations waives appellate review of both factual and legal questions.” (cleaned up)); *McCord v. Bridges*, No. 22-6169, 2023 WL 3220857, at \*3 (10th Cir. May 3, 2023) (unpublished) (applying the firm-waiver rule to deny a COA in context of arguments about the timeliness of a § 2254 petition). But we need not decide whether our firm-waiver rule provides us an independent basis for denying Franklin a COA, because we deny him a COA under the traditional COA framework. *See United States v. Thyberg*, 722 F. App’x 847, 850 (10th Cir. 2018) (noting ambiguity in our caselaw about whether the firm-waiver rule operates independently from the traditional COA framework, but declining to decide that issue because the traditional COA framework supplied a basis for denying the COA).

## **CONCLUSION**

We grant Franklin's application to proceed IFP but we deny his application for a COA and dismiss this appeal.

Entered for the Court

Gregory A. Phillips  
Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

JAMES HASTEN FRANKLIN, )  
Petitioner, )  
v. ) Case No. CIV-24-738-J  
STATE OF OKLAHOMA, )  
Respondent. )

**REPORT AND RECOMMENDATION**

Petitioner, a state prisoner appearing *pro se*,<sup>1</sup> has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (Docs. 1, 6).<sup>2</sup> The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). (Doc. 4). Upon review in accordance with Rule 4 of the Rules Governing § 2254 Cases, the undersigned finds that it is clear from the face of the Petition that it is time-barred by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Therefore, the undersigned recommends that the action be **DISMISSED WITH PREJUDICE**.

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<sup>1</sup>A *pro se* litigant's pleadings are liberally construed "and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). But the court cannot serve as Petitioner's advocate, creating arguments on his behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

<sup>2</sup>Citations to the parties' filings and attached exhibits will refer to this Court's CM/ECF pagination.

## I. Background

On February 27, 2020, following a jury trial in the Oklahoma County District Court, Petitioner was convicted of one count of shooting with intent to kill (Count One) and one count of being a felon in possession of a firearm (Count Two). (Doc. 6, at 1); Oklahoma County District Court, Case No. CF-2017-7159.<sup>3</sup> On April 14, 2020, Petitioner was sentenced to forty-five years of imprisonment on Count One and ten years of imprisonment on Count Two. (See Doc. 6, at 1); Oklahoma County District Court, Case No. CF-2017-7159, *supra* note 3. Petitioner timely filed a direct appeal, and the Oklahoma Court of Criminal Appeals (“the OCCA”) affirmed the state district court’s judgment and sentence on August 12, 2021. (Doc. 6, at 2); OCCA, Case No. F-2020-284.<sup>4</sup> On November 7, 2023, Petitioner filed an application for post-conviction relief, which the Oklahoma County District Court denied. (Doc. 6, at 4); Oklahoma County District Court, Case No. CF-2017-7159, *supra* note 3. Petitioner appealed the denial, but the OCCA declined jurisdiction and dismissed the appeal because Petitioner filed the notice of post-conviction appeal out of

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<sup>3</sup><https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2017-7159> (*Docket Sheet*) (last visited Sept. 4, 2024). The undersigned takes judicial notice of the docket sheets and related documents in Petitioner’s state criminal proceedings. *See United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009) (exercising discretion “to take judicial notice of publicly-filed records in [this] court and certain other courts concerning matters that bear directly upon the disposition of the case at hand”) (citation omitted).

<sup>4</sup><https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=2020-284> (*Docket Sheet*) (last visited Sept. 4, 2024).

time. (Doc. 6, at 4); OCCA, Case No. PC-2024-148.<sup>5</sup> Petitioner attempted to appeal the OCCA's decision to the Oklahoma Supreme Court, but the Oklahoma Supreme Court, treating the appeal as an application to assume original jurisdiction, declined to exercise jurisdiction on June 10, 2024. Oklahoma Supreme Court, Case No. MA-122150.<sup>6</sup>

On July 18, 2024, Petitioner filed the instant Petition for habeas relief under 28 U.S.C. § 2254. (Doc. 1, at 9). Petitioner raises four grounds for relief. In Ground One, Petitioner states,

Self defense the statement of facts is when Ms. Hanson was told that she needs to be gone by the time Petitioner return she became irate, angry and made Petitioner believe that she was going to cause him great bodily harm and imminent danger, just as Lampkin, J. and '4' four other justices had concern results.

(Doc. 6, at 5; *see also* Doc. 1, at 2). In Ground Two, Petitioner contends that he was denied a fair trial because his trial counsel failed to object when the prosecution defined "beyond a reasonable doubt." (Doc. 6, at 6-7; Doc. 1, at 3-7). In Ground Three, Petitioner alleges that because trial counsel and appellate counsel worked at the same public defender's office, there was a "conflict of interest in violation of Petitioner's rights to equal protection or his rights to effective assistance of trial and appellate counsel." (Doc. 6, at 8; Doc. 1, at 7). Lastly, in Ground Four, Petitioner alleges a *Batson* violation because the jury was "all white" and the prosecution was aware of exculpatory evidence. (Doc. 6, at 9-10; Doc. 1,

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<sup>5</sup><https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=2024-148> (*Docket Sheet*) (last visited Sept. 4, 2024).

<sup>6</sup><https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=122150> (*Docket Sheet*) (last visited Sept. 4, 2024).

at 7-9). Petitioner also contends that his sentence was “unjustly enhanced under the Okla. Stat. tit. 21 § 51.1 because ‘17’ seven years had elapsed on the 1976 cases that the prosecutor used [when it] clearly states after ‘10’ ten years can’t be used.” (Doc. 6, at 13; *see also* Doc. 1, at 8).

Regarding the timeliness of the Petition, Petitioner states that he is actually and factually innocent and cites the previously mentioned conflict of interest between his trial and appellate counsel. (Doc. 6, at 13). Petitioner also states, “I was prohibited from getting my transcripts to [continue] appealing my conviction and I could not appeal within that time frame.” (*Id.*) For relief, Petitioner asks the Court to modify his sentence “in accordance with the first time as the statute calls for in Okla. Stat. tit. 21 § 51.1.” (*Id.* at 14).

## **II. Screening Requirement**

The court is required to promptly examine and summarily dismiss habeas petitions prior to any answer or other pleading by the state, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Rule 4, Rules Governing § 2254 Cases. This action by the court on its own initiative will not prejudice Petitioner, as he has an opportunity to be heard on the issues raised by filing a timely objection to this Report and Recommendation. *See Smith v. Dorsey*, 1994 WL 396069, at \*3 (10th Cir. July 29, 1994) (unpublished op.) (finding “no due process problem” where magistrate judge raised issue of procedural bar *sua sponte* and petitioner had opportunity to object to report and recommendation prior to district court’s adoption thereof) (citing *Hardiman v. Reynolds*, 971 F.2d 500, 502-05 (10th Cir. 1992)).

### **III. The Petition Is Time-Barred by AEDPA.**

AEDPA established a one-year limitations period for federal habeas claims by petitioners in state custody. 28 U.S.C. § 2244(d)(1). The limitations period runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

*Id.* AEDPA includes a tolling provision for properly filed post-conviction actions:

The time during which a properly filed application for State postconviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

*Id.* at § 2244(d)(2).

#### **A. The Petition Is Untimely Under § 2244(d)(1)(A).**

Unless a petitioner alleges facts implicating §§ 2244(d)(1)(B), (C), or (D), “[t]he limitations period generally runs from the date on which the state judgment became final . . . but is tolled during the time state post-conviction review is pending.” *Preston v. Gibson*, 234 F.3d 1118, 1120 (10th Cir. 2000) (citing §§ 2244(d)(1)(A), 2244(d)(2)).

Petitioner alleges that he was “prohibited from getting [his] transcripts to [continue] appealing [his] conviction.” (Doc. 6, at 13). The undersigned liberally construes this allegation as an assertion that an unconstitutional or unlawful State-created impediment — here, the failure to provide Petitioner with transcripts — prevented Petitioner from timely filing his Petition, implicating 28 U.S.C. § 2244(d)(1)(B). “Courts have unanimously rejected the proposition that the absence of transcripts automatically triggers statutory tolling under § 2244(d)(1)(B).” *Heinemann v. Murphy*, 401 F. App’x 304, 309 (10th Cir. 2010) (unpublished) (citing cases). “Instead, petitioners must show that the State’s failure to provide transcripts *prevented* them from filing their habeas corpus petitions.” *VunCannon v. Harpe*, No. CIV-21-01128-JD, 2024 WL 689768, at \*3 (W.D. Okla. Feb. 20, 2024) (citing *Heinemann*, 401 F. App’x at 310), *certificate of appealability denied*, WL 2122380 (10th Cir. May 13, 2024). Petitioner has alleged no facts indicating that his lack of access to court transcripts prevented him from filing this habeas petition. Thus, 28 U.S.C. § 2244(d)(1)(B) is not applicable to the Petition.

Petitioner did not allege facts implicating §§ 2244(d)(1)(C) or (D). Thus, the limitations period began on the date his judgment became final. 28 U.S.C. § 2244(d)(1)(A). Since Petitioner appealed his judgment and sentence to the OCCA but did not seek review by the United States Supreme Court, his judgment became final when the time to file a petition for certiorari passed. *Jones v. Patton*, 619 F. App’x 676, 678 (10th Cir. 2015); *Locke v. Saffle*, 237 F.3d 1269, 1273 (10th Cir. 2001). A petition for certiorari must be filed with the United States Supreme Court within 90 days of the entry of judgment by the state court of last resort. Sup. Ct. R. 13(1). The OCCA affirmed the judgment and sentence

on August 12, 2021, so Petitioner's judgment became final 90 days later, on November 10, 2021. (Doc. 6, at 2); OCCA, Case No. F-2020-284, *supra* note 4. The one-year statute of limitations began the next day. *Harris v. Dinwiddie*, 642 F.3d 902, 906 n.6 (10th Cir. 2011). Thus, Petitioner had until November 11, 2022, to file his habeas petition, absent any tolling event. *See id.* (noting the limitations period began the day after the judgment became final and ended one year later on the same day).

Because Petitioner did not attempt to file any form of state post-conviction relief until November 7, 2023 — almost one year after the limitations periods had already expired — that effort did not result in tolling under § 2244(d)(2). *See Clark v. Oklahoma*, 468 F.3d 711, 714 (10th Cir. 2006) (“Only state petitions for post-conviction relief filed within the one year allowed by AEDPA will toll the statute of limitations.”); *Green v. Booher*, 42 F. App’x 104, 106 (10th Cir. 2002) (“[Petitioner’s] state application [for postconviction relief] could not toll the federal limitation period, because he did not file it until after the one-year period had expired.”). Moreover, Petitioner is not entitled to equitable tolling, as a lack of access to trial court transcripts does not constitute the “extraordinary circumstances” necessary to trigger equitable tolling, and Petitioner has alleged no other facts invoking equitable tolling. *Kenneth v. Martinez*, 771 F. App’x 862, 865 (10th Cir. 2019) (“[T]his court has repeatedly rejected the argument that difficulty in obtaining trial records constitutes “extraordinary circumstances” justifying equitable tolling.”); *United States v. Titties*, No. CIV-19-594-R, 2019 WL 3806632, at \*2 (W.D. Okla. Aug. 13, 2019) (“[T]he lack of access to transcripts and other filings does not provide a basis for equitable

tolling.”). Thus, Petitioner’s habeas action, filed July 18, 2024, is untimely under § 2244(d)(1)(A).

**B. Petitioner Is Not Entitled to the Actual Innocence Exception.**

Regarding the timeliness of his Petition, Petitioner cites his actual innocence. (Doc. 6, at 13). Indeed, a “credible showing of actual innocence” may bypass the limitations period bar. *Doe v. Jones*, 762 F.3d 1174, 1182 (10th Cir. 2014) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013)). But “[a] claim of actual innocence typically must be based on new evidence suggesting ‘factual innocence, not mere legal insufficiency.’” *Griffin v. Scnurr*, 640 F. App’x 710, 721 (10th Cir. 2016) (quoting *Bousley v. United States*, 523 U.S. 614, 623 (1998)). And “[t]o be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence — whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence — that was not presented at trial.” *Schlup v. Delo*, 513 U.S. 298, 324 (1995). Petitioner “must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” *McQuiggin*, 569 U.S. at 399 (quoting *Schlup*, 513 U.S. at 327).

Petitioner states that “the actual and factual [innocence] of the charge and crime is [his] true plea,” but he does not allege the existence of any new evidence, merely reasserting that there was a conflict of interest between his trial counsel and appellate counsel. (Doc. 6, at 13). Because Petitioner has not provided “new reliable evidence” or other grounds sufficient to overcome the AEDPA limitations bar, the Petition should be dismissed with prejudice. *See Renteria v. Bryant*, 774 F. App’x 440, 445-46 (10th Cir.

2019); *see Brown v. Roberts*, 177 F. App'x 774, 778 (10th Cir. 2006) (“Dismissal of a [§ 2254 habeas] petition as time barred operates as a dismissal with prejudice[.]”).

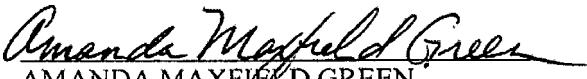
**IV. Recommendation and Notice of Right to Object.**

For the foregoing reasons, it is recommended that Petitioner’s Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 (Docs. 1, 6) **BE DISMISSED WITH PREJUDICE AS UNTIMELY.**

**Petitioner is advised of the right to file an objection to this Report and Recommendation with the Clerk of Court by September 25, 2024**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge and terminates the referral unless and until the matter is re-referred.

ENTERED this 4<sup>th</sup> day of September, 2024.

  
AMANDA MAXFIELD GREEN  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

JAMES HASTEN FRANKLIN, )  
Petitioner, )  
v. ) Case No. CIV-24-738-J  
STATE OF OKLAHOMA, )  
Respondent. )

ORDER

Petitioner, a state prisoner proceeding pro se, initiated this habeas corpus action under 28 U.S.C. § 2254 in July 2024. [Doc. Nos. 1, 6].<sup>1</sup> The matter was referred for initial proceedings to United States Magistrate Judge Amanda Maxfield Green consistent with 28 U.S.C. § 636. [Doc. No. 4].

On September 4, 2024, Judge Green issued a Report and Recommendation recommending that the Court dismiss Petitioner's § 2254 action as untimely under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2241 *et seq.* (R. & R.) [Doc. No. 11] at 1–9.<sup>2</sup> Petitioner objected to the Report and Recommendation on September 23, 2024. (Obj.) [Doc. No. 14]. The Court "applies *de novo* review to those findings on which [Petitioner] specifically objected but reviews the non-objected to portions of the Recommendation only to confirm that there is no clear error on the face of the record." *Gauthier v. Hunt*, No. CIV-20-1153-J, 2021 WL 1886297, at \*2 (W.D. Okla. May 11, 2021) (cleaned up).

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<sup>1</sup> Petitioner filed his initial petition on July 22, 2024. [Doc. No. 1]. After being ordered to cure certain deficiencies in his initial filing, he submitted an amended petition on August 9, 2024. (Am. Pet.) [Doc. No. 6].

<sup>2</sup> All page citations refer to the Court's CM/ECF pagination.

APPENDIX

B

**I. Background**

In February 2020, Petitioner was convicted by jury in Oklahoma state court of shooting with intent to kill and being a felon in possession of a firearm. He was sentenced to a lengthy prison term, and his convictions and sentences were affirmed on direct appeal in August 2021.

Over two years later, Petitioner unsuccessfully sought post-conviction relief in state district court. He appealed, but the Oklahoma Court of Criminal Appeals declined jurisdiction and dismissed the matter. He then filed a petition in error with the Oklahoma Supreme Court, which treated it as an application to assume original jurisdiction and declined to do so. He subsequently filed this § 2254 action.

Petitioner raises four grounds for habeas corpus relief. First, he appears to reassert the self-defense claim raised during his state trial. *See* Am. Pet. at 5. Second, he insists that he was denied a fair trial because his trial counsel failed to object to the prosecutor's improper attempt to define "reasonable doubt." *Id.* at 6. Third, he maintains that because the same public defender's office employed his trial and appellate counsel, there was a "conflict of interest in violation of [his] rights to equal protection or his rights to effective assistance of trial and appellate counsel." *Id.* at 8 (cleaned up). Fourth and finally, he alleges a *Batson* violation, noting that the jury was "all white" and, unrelatedly, that the prosecution was aware of exculpatory evidence. *Id.* at 9. Though not formally raised as a ground for relief, he also asserts that his sentence was "unjustly enhanced" under Okla. Stat. tit. 21, § 51.1. *Id.* at 13.

As for the timeliness of his § 2254 action, Petitioner insists that he is actually and factually innocent and again cites the apparent conflict of interest between his trial and appellate counsel. *Id.* He also claims that he was "prohibited from getting [his] transcripts to continue appealing [his] conviction and . . . could not appeal within that time frame." *Id.* (cleaned up).

**II. Report and Recommendation**

The AEDPA imposes a one-year statute of limitations on filing a § 2254 habeas petition. 28 U.S.C. § 2244(d)(1). This statute of limitations begins to run from the latest of four dates: (1) the date on which the judgment became final by the conclusion of direct review or expiration of the time to seek direct review; (2) the date on which an unconstitutional or unlawful impediment to filing an action was removed; (3) the date on which a new constitutional right was initially recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review; and (4) the date on which the factual predicate of the claims presented could have been discovered through the exercise of due diligence. *See* 28 U.S.C. § 2244(d)(1)(A)–(D). The AEDPA further provides that “[t]he time during which a properly filed application for State post-conviction or other collateral review . . . is pending shall not be counted toward [this] period of limitation.” *Id.* § 2244(d)(2). But if a state post-conviction application is not properly filed or it is untimely, it does not toll the statutory clock. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). And “[o]nly state petitions for post-conviction relief filed within the one year allowed by AEDPA will toll the statute of limitations.” *Clark v. Oklahoma*, 468 F.3d 711, 714 (10th Cir. 2006).

On review, Judge Green reasoned that, absent tolling, Petitioner had until November 11, 2022, to file his habeas petition under § 2244(d)(1)(A). *See* R. & R. at 7. She further reasoned that because Petitioner did not seek state post-conviction relief until after that limitations period had expired, that effort did not result in tolling under § 2244(d)(2).<sup>3</sup> *Id.* Thus, because Petitioner’s § 2254 action was initiated in July 2024, she concluded the action was untimely under § 2244(d)(1)(A). *Id.*

---

<sup>3</sup> Nor did Judge Green find that the lack of transcripts warranted equitable tolling. *See* R. & R. at 7.

Judge Green found, too, that § 2244(d)(1)(B) was inapplicable. *Id.* at 6. Though Petitioner alleged generally that he was prohibited from receiving his state court transcripts to continue appealing his conviction, Judge Green reasoned that he had alleged no facts indicating that his lack of access to court transcripts prevented him from filing his habeas action.<sup>4</sup> *Id.*

Finally, Judge Green found that Petitioner was not entitled to an actual innocence exception, noting Petitioner's failure to allege the existence of new reliable evidence or other grounds sufficient to overcome the limitations bar. *Id.* at 8.

### **III. Petitioner's Objection**

Petitioner's objection does not meaningfully address Judge Green's strong findings on timeliness. Instead, Petitioner provides only: "Petitioner, has asked this court to modify his sentence in accordance with the first time, just as the law and the statute call for in Oklahoma statute, title 21 O.S. § 51.1, when it clearly states after (10) ten years can not be used, in doing so would truly be turning a true miscarriage of justice into a right that was hinged from fruits of a poisonous tree syndrome that violates the constitutional right to a guaranteed fair trial by the constitution." Obj. at 1. Given Petitioner's failure to adequately address timeliness, the Court finds that Judge Green's findings should be adopted. *See, e.g., Rivera v. Mullin*, 446 F. App'x 130, 131–32 (10th Cir. 2011) (unpublished) ("The magistrate's cogent report and recommendation correctly considered and resolved the timeliness issue; since [petitioner's] objection did not address that issue, the district court properly adopted the magistrate's report and recommendation. No reasonable jurist could conclude otherwise.").

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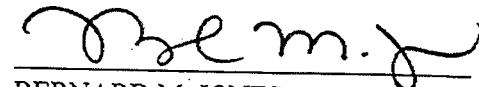
<sup>4</sup> Petitioner did not allege facts implicating § 2244(d)(1)(C) or (D). *See R. & R.* at 6.

**IV. Conclusion**

For the reasons set forth herein, the Court ADOPTS the Report and Recommendation [Doc. No. 11] and DISMISSES Petitioner's § 2254 action WITH PREJUDICE.

In this case, a certificate of appealability (COA) may issue only if Petitioner shows both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the [Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Upon review, the Court concludes that Petitioner is not entitled to issuance of a COA. A COA is therefore DENIED.

IT IS SO ORDERED this 27<sup>th</sup> day of September, 2024.

  
\_\_\_\_\_  
BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE

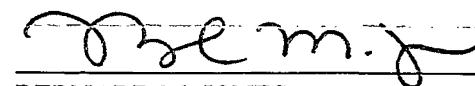
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

JAMES HASTEN FRANKLIN, )  
Petitioner, )  
v. ) Case No. CIV-24-738-J  
STATE OF OKLAHOMA, )  
Respondent. )

**JUDGMENT**

Pursuant to the Order filed separately this same date, Petitioner's § 2254 action is DISMISSED WITH PREJUDICE. A certificate of appealability is denied.

ENTERED this 27<sup>th</sup> day of September, 2024.

  
BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

JAMES HASTEN FRANKLIN, )  
Petitioner, )  
v. ) Case No. CIV-24-738-J  
STATE OF OKLAHOMA, )  
Respondent. )

ORDER

On September 27, 2024, the Court dismissed Petitioner's habeas corpus action as untimely under the Antiterrorism and Effective Death Penalty Act of 1996. [Doc. No. 15]. He now requests leave to proceed on appeal in forma pauperis. [Doc. No. 21].

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The prisoner "must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Having reviewed Petitioner's motion and the filings in this case, the Court finds that his appeal is not taken in good faith as he would not be able to present a reasoned, nonfrivolous argument. Thus, Petitioner's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees [Doc. No. 21] is DENIED. Petitioner is advised that unless he pays the \$605 appellate filing fee in full to the Clerk of this Court within 21 days of the date of this Order, his action may be subject to dismissal by the appellate court.

IT IS SO ORDERED this 8<sup>th</sup> day of November, 2024.

B

Bernard M. Jones  
BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE



1056230580\*

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY DEC 20 2023  
STATE OF OKLAHOMA

JAMES HASTEN FRANKLIN,  
Petitioner,  
v.  
THE STATE OF OKLAHOMA,  
Respondent

Case No. CF-2017-7159

17

**RICK WARREN  
COURT CLERK**

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

The above named Petitioner has filed an Application for Post-Conviction Relief and the Respondent, through the District Attorney of Oklahoma County, has filed a timely response thereto.

## **MATERIALS REVIEWED FOR DECISION**

This Court has reviewed the following materials in making this decision: (1) Petitioner's Application for Post-Conviction Relief and (2) State's Response to Application for Post-Conviction Relief

## FINDINGS OF FACT

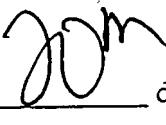
On November 29, 2017, Petitioner was charged by Information with the following crimes in Oklahoma County Case No. CF-2017-7159: Count 1, Shooting with Intent to Kill, AFCF (2 or More); Count 2, Possession of a Firearm After Former Conviction of a Felony, AFCF (2 or More); and Possession of a Weapon in the Commission of a Felony, AFCF (2 or More). Prior to trial, the court ruled that the crimes charged in Counts 2 and 3 merged; accordingly, the charge in Count 3 was dismissed. On February 24-27, 2020, Petitioner, represented by counsel, was tried by a jury for the remaining crimes as alleged, the Honorable Natalie Mai presiding. The jury returned a verdict of guilty and

# APPENDIX C

Notwithstanding the statute of limitation of the Post-Conviction Procedure Act, Petitioner's allegation of error is not proper for consideration by this Court, as it is one that could have been raised on direct appeal. Petitioner does not offer this Court sufficient reason for failing to previously assert these arguments. Accordingly, this Court finds that consideration of these claims is procedurally barred and properly denied as a matter of law. *Boyd v. State*, 915 P.2d 922, 924 (Okl.Cr. 1996). There being no basis upon which he is entitled to collateral relief, this Court finds that Petitioner's Application for Post-Conviction Relief must be and is hereby DENIED.

**THEREFORE IT IS ORDERED ADJUDGED AND DECREED**, for the reasons set forth above, Petitioner's Application for Post-Conviction Relief is hereby DENIED.

Dated this 20 day of December 2023.

  
HEATHER COYLE  
DISTRICT JUDGE

**CERTIFIED COPY**  
AS FILED OF RECORD  
IN DISTRICT COURT

DEC 21 2023

RICK WARREN COURT CLERK  
Oklahoma County  


#### NOTICE OF RIGHT TO APPEAL

Under the authority of 22 O.S. § 1087, this order may be appealed to the Court of Criminal Appeals by petition in error filed within thirty (30) days from the entry of the judgment. To do so, a notice of intent to appeal must be filed within ten (10) days of the entry of this judgment. This Court may stay the execution of the judgment pending disposition on appeal, provided however, the Court of Criminal Appeals may direct the vacation of an order staying the execution prior to final disposition of the appeal.

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Order Denying Application for Post Conviction Relief was mailed to the following on the date of filing:

James Franklin #93698  
Dick Connor Correctional Center  
129 Conner Road  
Hominy, OK 74035

and hand-delivered to:

Aaron Etherington  
Assistant District Attorney  
Leadership Square  
211 N. Robinson, Suite 700N  
Oklahoma City, OK 73102



---

Deputy Court Clerk

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

JAMES HASTEN FRANKLIN,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

APR - 5 2024

JOHN D. HADDEN  
CLERK

No. PC-2024-148

**ORDER DECLINING JURISDICTION**

Petitioner has appealed to this Court from the December 20, 2023, order of the District Court of Oklahoma County, denying his application for post-conviction relief in Case No. CF-2017-7159. The notice of post-conviction appeal was due to be filed with the clerk of the trial court on or before January 9, 2024. According to the record, the notice of post-conviction appeal was filed in this case on January 10, 2024.

Rule 5.2(C)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2024), mandates the filing of the written notice of post-conviction appeal with the trial court clerk within twenty days from the date the order is filed in the trial court. The filing of the notice of post-conviction appeal with the trial court clerk is jurisdictional and

APPENDIX D

failure to timely file constitutes waiver of the right to appeal. See also *Pershall v. State*, 2017 OK CR 13, 400 P.3d 871.

Accordingly, this Court **DECLINES** jurisdiction and **DISMISSES** this matter. Issuance of this order concludes these proceedings before this Court.

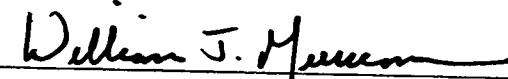
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

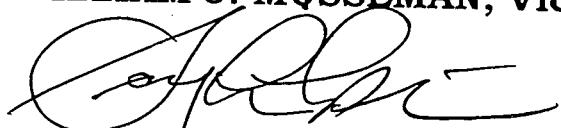
5<sup>th</sup> day of April, 2024.



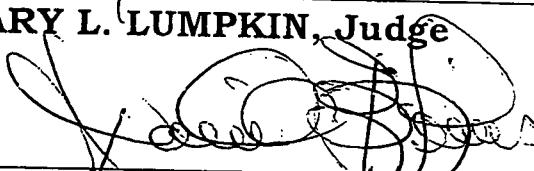
**SCOTT ROWLAND, Presiding Judge**



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



**GARY L. LUMPKIN, Judge**

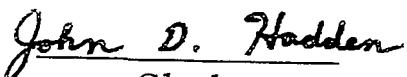


**DAVID B. LEWIS, Judge**



**ROBERT L. HUDSON, Judge**

ATTEST:



Clerk



\* 1 0 5 8 1 8 9 7 2 2 \*

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JAMES HASTEN FRANKLIN, )  
Petitioner, )  
v. )  
THE STATE OF OKLAHOMA, )  
Respondent. )

No. 122,150

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

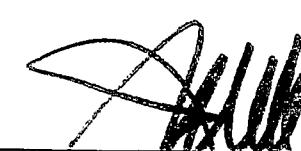
JUN 10 2024

JOHN D. HADDEN  
CLERK

ORDER

The Court treats Petitioner James Hasten Franklin's petition in error as an application to assume original jurisdiction. *Mahorney v. Moore*, 2002 OK 39, ¶ 6, 50 P.3d 1128, 1130. The Court assumes original jurisdiction for the sole purpose of adjudicating whether the Court has jurisdiction over Petitioner's claim in his filing. *Dutton v. City of Midwest City*, 2015 OK 51, ¶ 21, 353 P.3d 532, 541; *Clark v. Farris*, 2015 OK 62, ¶ 3, 358 P.3d 932. The Court declines to assume original jurisdiction on the merits of Petitioner's claim because it does not invoke any request for relief within this Court's civil original jurisdiction. *Dutton*, 2015 OK 51, ¶ 21, 40, 353 P.3d at 541.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS  
10<sup>TH</sup> DAY OF JUNE, 2024.

  
CHIEF JUSTICE

ALL JUSTICES CONCUR

APPENDIX E

SUPREME COURT OF THE UNITED STATES

James Hasted Franklin

Appellant

V

CASE NO. 24-6225

STATE OF OKLAHOMA

D.C. NO. 5-24-CV-00738-

Respondent

PETITIONER-APPELLANT, ASK THE COURT TO ACCEPT  
EXHIBITS THAT WILL GET HIM TO EQUITABLE TOLLING AND  
SHOW THAT HE HAS BEEN CONSISTENT WITH HIS PURSUEE  
IN CHALLENGE TO FIGHT HIS CLAIM AND EQUITABLE  
EXCEPTION OVERRIDE LIMITATION.

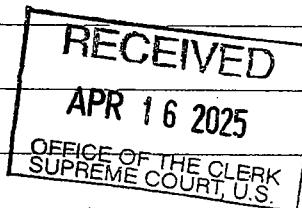
PETITIONER PRAY THAT THIS WILL ALLOW AND ACCEPT.

RESPECTFULLY SUBMITTED  
James Hasted Franklin

OPEN DIX

AP

f



UNITED STATES SUPREME COURT

James Hastein Franklin  
129 Conner Rd.  
Hominy, OK.  
74035

DEAR Court Clerk,

I'M RESENDING A CORRECT VERIFICATION  
BECAUSE THE ONE WITH THE RECEIVING MAIL HAS THE  
MONTH OF MARCH ON IT. I MAILED A CORRECT COPY ON  
THE SAME DATE. APRIL 4th. 2025

PLEASE ACCEPT THE CORRECT COPY WITH CORRECT  
DATE

mailed

4-4-25

RESPECTFULLY Submitted  
James Hastein Franklin

RECEIVED

APR 16 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

JAMES HASTEN FRANKLIN

PETITIONER,

CASE NO.

✓

STATE OF OKLAHOMA

RESPONDENT,

PETITION FOR CERTIORARI

COME NOW, JAMES HASTEN FRANKLIN, PETITIONER by the  
RULES of this Court to get this Court to grant his CERTIORARI  
BECAUSE THE OKLAHOMA STATUE ANN. 21 § 5.1 WAS ERRONEOUSLY  
USED TO ENHANCE my SENTENCE, AND my PRISON RECORD WILL SHOW  
THAT PETITIONER had COMPLETED that SENTENCE IN 3-6-01.  
THEREFORE it COULD NOT BE USED BECAUSE PETITION HAD A  
SEVENTEEN "17" YEAR CLEAR HISTORY ELAPSE by 11-7-17 AT TIME  
of crime.

OKLAHOMA COURT WOULD NEVER ADDRESS THE ISSUE BECAUSE  
THEY DID NOT CARE TO CORRECT ANY ISSUE THAT ARE WRONG IN THEIR  
STATE.

This Court I PRAY will TAKE THE TIME TO REALLY EXAMINE  
AND CORRECT, JUST AS THE STATUE CALLS FOR TO GIVE THE FIVE "5" YEARS

Respectfully Submitted  
James Haste Franklin

# SUPREME COURT OF THE UNITED STATES

JAMES HASTEN FRANKLIN.

PETITIONER,

CASE NO.

STATE OF OKLAHOMA

RESPONDENT,

## PETITION FOR CERTIORARI

COME NOW, JAMES HASTEN FRANKLIN, PETITIONER by the RULES of this Court to get this Court to grant his CERTIORARI because the OKLAHOMA STATUE: Annt. 21, § 51-1 was erroneously used to enhance my sentence and my prison record will show that Petitioner had completed that sentence in 2001. THEREFORE it could not be used because Petitioner had a SEVENTEEN '17' year clear history ELAPSE by 11-7-17 at time of crime.

OKLAHOMA Court would NEVER ADDRESS the ISSUE because they did NOT CARE TO CORRECT any issues that are wrong in their STATE.

This Court I PRAY will take the time to really EXAMINE and CORRECT just as the STATUE CALLS for to GIVE THE FIVE "5" YEARS.

RECEIVED

JAN 13 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RESPECTFULLY SUBMITTED

James Hasty Franklin

ms BOVOS

4-2-21

I'm addressing you for the second time after I sent you the evidence that prove to you and the court that I was not on parole for the 1976 cases.

That evidence clearly shows that there is no way that I was on ~~parole~~ parole for the 1976 cases because it clearly show that I had discharge from those cases by the Department of Correction Records.

ms BOVOS, I would like to know why you will not reply to the letter and evidence of my proving to you that I was not on parole according to the records from the Department of Corrections, that shows that I was not on parole.

ms BOVOS, How long is it going to take you to add the evidence to my appeal.

MR Franklin  
James Franklin

It

DEAR SIR,

6-1-21

Robert Ravitz

I'm addressing you this letter because I'm having a issue with ms HALIE BOVOS adding some very ~~impor~~ important information into my Appeal that will help me to get a Sentence Reduction on my case.

Sir I sent ms BOVOS creditable documents from the Department of Correction of my 1976 cases which clearly shows that those cases were discharged in year of 2001 which were well pass the 10 yrs of being out of the fram in which they could be used by the Court to enhance my sentence. I've asked her to please add this information to my Appeal and she will not submit it. She said in her letter that she had looked into them and states that I was on parole and I was not. You can see its clear that I was not on parole.

please sir will you have this information

2+

ATTORNEY CLIENT PRIVILEGE  
**PUBLIC DEFENDER OF OKLAHOMA COUNTY**

320 ROBERT S. KERR AVENUE, SUITE 400  
OKLAHOMA CITY, OK 73102  
(405) 713-1550 FAX: (405) 713-7169

**ROBERT A. RAVITZ**  
PUBLIC DEFENDER

**JACOB BENEDICT**  
FIRST ASSISTANT PUBLIC DEFENDER

March 15, 2022

James Franklin, #93698  
R.B. Dick Conner Correctional Center  
129 Conner Road  
Hominy, OK 74035

Re: State v. Franklin  
F-2020-284

Dear Mr. Franklin:

I received your letters. I am sorry for how long it has taken me to respond. I have had a very heavy case load. The documents you sent me show when you were paroled. That is different than discharging the cases. You had a 75 year sentence for your 1976 cases, which did not discharge until May 27, 2017. You were then charged in the current case in 2017 which means it was bootstrapped. I could not raise that issue in your brief because it was not a valid issue. I am sorry. I wish that was not the law but it is.

Since the Court of Criminal Appeals has reached a decision on your case, I no longer represent you.

I wish you the best of luck.

Sincerely,



Hallie E. Bovos  
Assistant Public Defender



REGINA GARNETT, CSR  
Official Court Reporter  
Oklahoma County Courthouse  
321 Park Avenue, Suite 706  
Oklahoma City, Oklahoma 73102  
405-713-7116

March 5, 2021

Mr. James Franklin  
DOC #93698  
R.B. Dick Conner Correctional Center, W-114  
129 Conner Road  
Hominy, Oklahoma 74035

RE: Transcript Request in Case No. CF-2017-7159

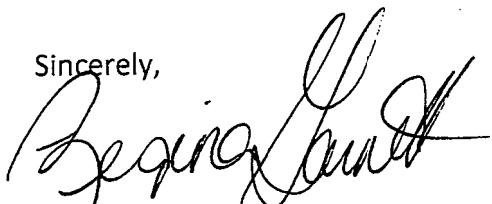
Dear Mr. Franklin:

You have requested a copy of the Trial transcript held from February 21, 2020 through February 27, 2020, with the Formal Sentencing being held on 4-14-20. Your cost for the Trial transcript is \$612.50.

There was also a Motion Hearing, which was held before your Trial started, on February 24, 2020. The cost for this Motion Hearing is \$77.00.

If you wish to purchase said transcript, please mail a check or money order to my address noted above.

Sincerely,



Regina Garnett  
Certified Shorthand Reporter

3+



## CONSEQUENCE

RECORD OF ARREST

FRANKLIN  
JAMES  
03099  
1003 6 10 87  
0086 1 00 87

## PAROLE ET LIGTTITURALE BREVETTE

DATE 1/13/83

PAROLE BOARD APPEARANCE

DATE 15

REL Church of Christ EDUC GEM

OSBI NO. 16014 TBI NO. 51240812 IN EMERGENCY NOTIFICATION

PHONE NO 722766

MOVEMENT HISTORY		DATE		ACTION		DATE		CHARGE		DATE		PUNISHMENT	
FROM	TO												
OSPA	SCG	7-2-82				7-2-82		10-1-82		7-2-82		7-2-82	
SCG	OSPA	8-1-82				8-1-82		8-1-82		8-1-82		8-1-82	
OSPA	SCG	8-10-82				8-10-82		8-10-82		8-10-82		8-10-82	
1500	OSPA	10-8-82				10-8-82		10-8-82		10-8-82		10-8-82	
OSPA	1500	10-15-82				10-15-82		10-15-82		10-15-82		10-15-82	
SCG	OSPA	11-10-83				11-10-83		11-10-83		11-10-83		11-10-83	
OSPA	SCG	1-15-83				1-15-83		1-15-83		1-15-83		1-15-83	
1500	SCG	5-8-83				5-8-83		5-8-83		5-8-83		5-8-83	
1500	SCG	7-2-83				7-2-83		7-2-83		7-2-83		7-2-83	
SCG	1500	7-2-83				7-2-83		7-2-83		7-2-83		7-2-83	
OSPA	1500	7-2-83				7-2-83		7-2-83		7-2-83		7-2-83	
1500	SCG	7-2-83				7-2-83		7-2-83		7-2-83		7-2-83	

GR-09-79

100-063002

## REQUIRED CERTIFICATION

You must attach to this motion and affidavit a copy of your trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of this action. You must obtain the certified copy of your trust fund account statement (or institutional equivalent) from the appropriate official of each penal institution at which you are or were confined during the six-month period.

## STATEMENT OF INSTITUTIONAL ACCOUNTS

I hereby state that on 20 day of May, 2025 this prisoner had \$ 181.50 in his institutional account(s). I further state that the:

1. Average monthly deposits to the prisoner's accounts for the six-month period immediately preceding the filing of this action:

\$ 20.83 x 20% = \$ 4.17

2. Average monthly balance in the prisoner's accounts for six-month period immediately preceding the filing of this action:

\$ 217.98 x 20% = \$ 43.60

I FURTHER STATE THAT THE ABOVE-REFERENCED AMOUNTS WERE CALCULATED PURSUANT TO THE PRISONER'S INSTITUTIONAL ACCOUNT(S), A COPY OF WHICH IS ATTACHED HERETO.

3Lucas 360172  
Authorized Prison Official

Law Library Super AM  
Title

Offender# 0093698	Offender/Group Name FRANKLIN, JAMES	Institution DCCC	Unit UNIT V-B	Cell/Bed BED 118 (L)
----------------------	--	---------------------	------------------	-------------------------

**Transaction List**

Transaction Date	Transaction Type	Source Document #	Receipt#/Check#	Sender Name	Amount	Account Balance
11/01/2024	BEGINNING BALANCE					\$189.81
11/01/2024	SALES	13			(\$33.14)	\$156.67
11/05/2024	LEGAL COPAY	11/1/24DC			(\$0.47)	\$156.20
11/20/2024	DISBURSEMENT	COURT CLERK	13739748		(\$5.00)	\$151.20
11/30/2024	GANG PAY				\$25.00	\$176.20
11/30/2024	LEGAL COPAY	11/1/24DC			(\$0.82)	\$175.38
11/30/2024	LEGAL COPAY	11/5/24DC			(\$1.46)	\$173.92
11/30/2024	LEGAL COPAY	11/6/24DC			(\$0.73)	\$173.19
11/30/2024	LEGAL COPAY	11/13/24DC			(\$1.29)	\$171.90
11/30/2024	LEGAL COPAY	11/19/24DC			(\$0.28)	\$171.62
12/19/2024	SALES	12			(\$13.10)	\$158.52
12/31/2024	GANG PAY				\$25.00	\$183.52
01/07/2025	LEGAL COPAY	12/17/24DC			(\$2.19)	\$181.33
01/07/2025	LEGAL COPAY	12/27/24DC			(\$2.75)	\$178.58
01/17/2025	SALES	16			(\$17.11)	\$161.47
01/30/2025	LEGAL COPAY	1/27/25DC			(\$0.27)	\$161.20
01/31/2025	GANG PAY				\$25.00	\$186.20
01/31/2025	LEGAL COPAY	1/27/25DC			(\$4.26)	\$181.94
02/06/2025	LEGAL COPAY	DCC 1/29/25			(\$1.74)	\$180.20
02/11/2025	SALES	3			(\$13.94)	\$166.26
02/28/2025	GANG PAY				\$25.00	\$191.26
03/12/2025	SALES	21			(\$19.82)	\$171.44
03/31/2025	GANG PAY				\$25.00	\$196.44
04/07/2025	LEGAL COPAY	4/4/25DC			(\$1.74)	\$194.70
04/08/2025	LEGAL COPAY	4/4/25DC			(\$0.73)	\$193.97
04/09/2025	SALES	9			(\$17.72)	\$176.25
04/29/2025	JPAY	0000000179447083		FRYE, AMANDA	\$100.00	\$276.25
04/29/2025	SALES	27			(\$99.70)	\$176.55
04/30/2025	GANG PAY				\$25.00	\$201.55
05/07/2025	SALES	9			(\$20.05)	\$181.50

**Summary Balances**

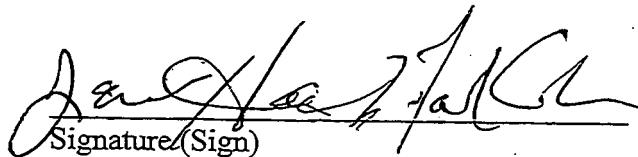
Available Balance \$0.30	Savings Balance \$181.20	Debt Encumbrance \$0.00	Other Encumbrance \$0.00	Instruments \$0.00	Administrative Holds \$0.00	Account Balance \$181.50
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COUNTY OF OSAGE )  
STATE OF OKLAHOMA ) ss:

VERIFICATION

I, James Haster Franklin, state under the penalty of perjury, under the laws of Oklahoma (Title 12 O.S.Supp.2004, §426), that the foregoing is true and correct. Executed at **Dick Conner Correctional Center, 129 Conner Road, Hominy, Oklahoma 74035-2100**, on MAY 12012025

James Haster Franklin  
Name (Print)

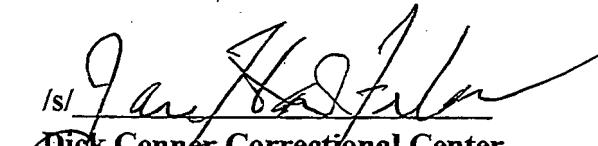
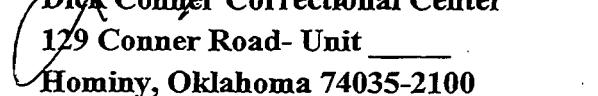
  
Signature (Sign)

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing instrument was mailed on MAY 12012025 by placing the same in the U.S. mail here at Dick Conner Correctional Center, 129 Conner Rd., Hominy, Oklahoma 74035, with first class postage prepaid to:

UNITED STATES SUPREME COURT  
2 FIRST STREET, N. E.  
WASHINGTON, D. C.  
20543

ATTORNEY GENERAL OFFICE  
313 N. E. 21st St.  
Oklahoma City, Okla-  
73105

  
/s/   
Dick Conner Correctional Center  
129 Conner Road- Unit \_\_\_\_\_  
Hominy, Oklahoma 74035-2100