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IN THE COURT OF CRIMINAL APPEALS OF

THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 26 2025

JOHN D. HADDEN
CLERK

No. D-2021-1249

DANIEL RAUL SANTIAGO VASQUEZ,	)
	)
Appellant,	)
v.	)
	)
STATE OF OKLAHOMA,	)
	)
Appellee.	)

ORDER DENYING REHEARING

Appellant is before the Court on a Petition for Rehearing pursuant to Rule 3.14(B), *Rules of the Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025). According to Rule 3.14(B), a Petition for Rehearing shall be filed for two reasons only:

(1) Some question decisive of the case and duly submitted by the attorney of record has been overlooked by the Court, or

(2) The decision is in conflict with an express statute or controlling decision to which the attention of this Court was not called either in the brief or in oral argument.

We affirmed Appellant's convictions and his sentences of death in *Vasquez v. State*, 2025 OK CR 1, __ P.3d __. Appellant contends in his petition that this Court overlooked one of his claims, specifically, the "legal effect of the Harjo statement on the imposition of the death penalty." He cites *Tison v. Arizona*, 481 U.S. 137 (1987) and *Enmund v. Florida,* 458 U.S. 782 (1982), without pin cites or analysis, in support of this contention. Both of these cases address felony murder cases and hold the death penalty cannot be imposed in such cases where the defendant was a minor participant in the crime and had no intent to kill or failed to show reckless indifference to human life. *Hopkins v. Reeves*, 524 U.S. 88, 94 (1998). These cases have nothing to do with cases where the defendant was found guilty of malice murder and the jury was properly instructed. *See Torres v. State*, 1998 OK CR 40, ¶ 59, 962 P.2d 3, 20, holding, "an *Enmund/Tison* instruction is not required in the second stage of a malice murder case where the jury has been instructed properly during the first stage of trial on aiding and abetting and the elements of first-degree malice murder."[1]

[1] Notably, on direct appeal, Appellant did not claim any error in the jury instructions.

In this case, the State charged Appellant with two counts of First-Degree Malice Murder, while acting in concert with Joshua Finkbeiner and Staci Harjo, not Felony Murder and he was convicted of both counts. Appellant argues Staci Harjo's statement to Officer Bittle recounting the events of the crimes (told to him during a smoke break) and that Joshua Finkbeiner killed the victims, would have shown Appellant did not have the requisite intent for imposition of the death penalty; therefore, his death sentences violate the Eighth Amendment.[2] Appellant refers to the excluded evidence as "the Harjo statement" and "eyewitness testimony of someone who was there" (when the murders occurred). He is mistaken. As addressed on direct appeal, Harjo's statement was not offered, it was Officer Bittle's statement about what Harjo told him and Harjo gave no testimony in this proceeding.

The jury convicted Appellant of two counts of First-Degree Malice Murder after receiving proper instruction on the crimes charged. As set forth above, this case does not involve felony murder. Any *Enmund/Tison* claim is simply unsupported by these facts. On direct

[2] The jury knew of this allegation since Appellant told police Finkbeiner was the killer and his statement was played for the jury.

appeal, this Court analyzed Appellant's denial of the right to present a defense claim and his due process claim regarding the exclusion of this proffered statement in great detail. We found the statement inadmissible under our statutes and as for Appellant's due process claim, we determined, "Harjo's statements contained on Court's Exhibit 7 would not have created a reasonable doubt that did not exist before." Implicit in our determination that this evidence was inadmissible and did not violate Petitioner's due process rights is the finding that Bittle's statement was inadmissible and immaterial in the penalty phase of trial.[3] However, Petitioner's convictions for two counts of First-Degree Malice Murder obviated the necessity of any *Enmund/Tison* analysis as set forth in *Torres*.

[3] The defense made no attempt to offer the Bittle affidavit as part of its mitigation evidence, no doubt recognizing its immateriality in a malice murder case. We also note that the State can reasonably limit mitigation evidence in capital cases. *See United States v. Tsarnaev*, 595 U.S. 302, 320 (2022) quoting *Oregon v. Guzek*, 546 U.S. 517, 526 (2006) (holding, states have authority to set "reasonable limits upon the evidence a [capital] defendant can submit [in mitigation], and control the manner in which it is submitted."); 21 O.S.2021, § 701.10(D) ("This section shall not be construed to authorize the introduction of any evidence [in mitigation] secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.").

We have reviewed Appellant's allegations and find that he is not entitled to a rehearing as this Court did not overlook any of Appellant's claims in reaching its decision, nor does the decision conflict with controlling decisions to which the attention of this Court was not called in the briefs or at oral argument. Based upon the foregoing, the Petition for Rehearing is **DENIED.**

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 26 **day of** March **, 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. Haddan

Clerk