

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 25 2019

**JOHN D. HADDEN
CLERK**

JIMCY MCGIRT,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

No. PC-2018-1057

**ORDER AFFIRMING DENIAL OF
APPLICATION FOR POST-CONVICTION RELIEF**

The Petitioner has appealed to this Court from an order of the District Court of Wagoner County denying his application for post-conviction relief in Case No. CF-1996-355. The record reflects Petitioner was found guilty following a jury trial and convicted of Count 1 – First Degree Rape by Instrumentation, in violation of 21 O.S. § 1111.1, Count 2 – Lewd Molestation, in violation of 21 O.S. § 1123(A)(5), and Count 3 – Forcible Sodomy, in violation of 21 O.S. § 888. He was sentenced to five hundred years imprisonment each for Counts I and II and life imprisonment without the possibility of parole for Count III. The sentences were ordered to be served consecutively.

Petitioner's conviction was affirmed by this Court. *See McGirt v. State*, F-1997-967 (August 26, 1998) (Not For Publication).

Petitioner has failed to establish entitlement to any relief in this post-conviction proceeding. *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294 (it is fundamental that where a post-conviction appeal is filed, the burden is upon the petitioner to sustain the allegations of his petition). Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments and sentences. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. All issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review. *Id.*; 22 O.S.2011, § 1086. Petitioner has not established any sufficient reason why his current grounds for relief were not previously raised. *Id.*

Petitioner tries to claim that his crimes were committed in portions of Oklahoma located in Indian Country, prohibiting Oklahoma courts from exercising jurisdiction over his crimes in Case No. CF-1996-355. However, the prosecution of Petitioner's crimes in that case was a justiciable matter, and thus he has not established

that the District Court lacked jurisdiction. Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma). The issues raised in Petitioner's application are addressed in *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017) and as a result are currently pending before the United States Supreme Court. *Murphy* is stayed pending the United States Supreme Court's final disposition of the petition for writ of certiorari. *Murphy v. Royal*, Nos. 07-7068 & 15-7041 (10th Cir. November 16, 2017). The United States Supreme Court has granted the petition for writ of certiorari. *Royal v. Murphy*, __ U.S. __, __ S.Ct. __, 2018 WL 747674 (Mem) (May 21, 2018). Therefore, *Murphy* is not a final decision and Petitioner has cited no other authority that refutes the jurisdictional provisions of the Oklahoma Constitution.

Therefore, the order of the District Court of Wagoner County denying Petitioner's application for post-conviction relief in Case No. CF-1996-355 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the MANDATE is ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court.

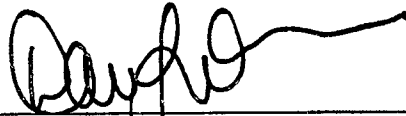
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

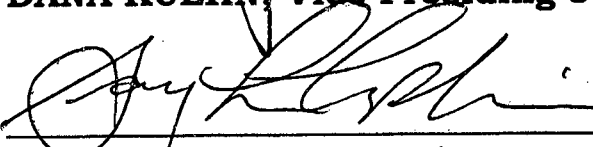
25th day of February, 2019.



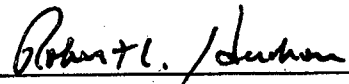
DAVID B. LEWIS, Presiding Judge



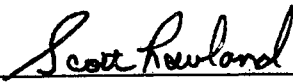
DANA KUEHN, Vice Presiding Judge



GARY L. LUMPKIN, Judge



ROBERT L. HUDSON, Judge



SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden

Clerk

PA/F

I, John D. Hadden, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Order affirming denial of appl. for post conviction relief in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 2nd day of March 2019.

Clerk

By Cynde Hannelbaum
DEPUTY

IN THE DISTRICT COURT OF WAGONER COUNTY, STATE OF OKLAHOMA

JIMCY McGIRT, pro se,
Petitioner,
vs.
STATE OF OKLAHOMA,
Respondent,

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CASE NUMBER: CF-1996-0355

WAGONER COUNTY, OKLA
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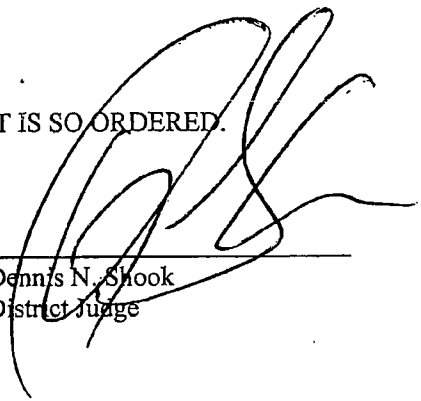
ORDER

The Petitioner filed a *Pro Se Petition for Post-Conviction Relief with Incorporated Brief* on the 18th day of June, 2018. The State filed its *Answer* to said petition on the 17th day of August, 2018.

It is the opinion of the Court that the Petitioner's *Petition* arguments mirror the arguments in the Tenth Circuit *Murphy v. Royal* case. The Court finds that the United States Court of Appeals for the Tenth Circuit has stayed all proceedings in *Murphy v. Royal*, Nos. 07-7068 & 15-7041 (*See Exhibit A*) and no further action will be taken until a final decision has been made by the United States Supreme Court No. 17-1107 (*See Exhibit B*); therefore the Petitioner's *Petition* will be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the *Pro Se Petition for Post-Conviction Relief with Incorporated Brief* is **DENIED**.

IT IS SO ORDERED.



Dennis N. Shook
District Judge