

Appendix A

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

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

CHARLES ANTHONY HOLMES,

SEP - 3 2025

Petitioner,

v.

No. PC-2025-593

THE STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the order of the District Court of Tulsa County denying him post-conviction relief in Case No. CF-2022-3296. A jury convicted Petitioner of assault with a dangerous weapon and assault and battery after former conviction of felonies. Consistent with the jury's verdict, he was sentenced to a total of thirty years imprisonment. The convictions and sentences were affirmed on direct appeal. *Holmes v. State*, No. F-2023-875 (Okl.Cr. April 24, 2025) (not for publication).

On June 12, 2025, Petitioner filed his first post-conviction application and the application that is the subject of this appeal. The District Court denied the application on July 8, 2025. We review the District Court's decision for an abuse of discretion. *State ex rel. Smith*

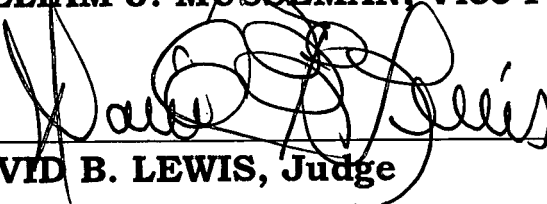
v. Neuwirth, 2014 OK CR 16, ¶ 12, 337 P.3d 763, 766. An abuse of discretion involves a conclusion that is “clearly erroneous.” *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d 1208, 1209.

Before the District Court Petitioner claimed that he was denied the effective assistance of appellate counsel. Specifically, Petitioner claimed that 1) counsel should have challenged the statutes governing assault and battery with a dangerous weapon as unconstitutional as applied; 2) should have more effectively contended that Appellant’s sentence was excessive; 3) should have contended that a member of law enforcement illegally gave advice to a witness; and 4) should have investigated Appellant’s Freedmen status.

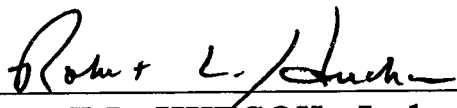
Claims challenging appellate counsel’s effectiveness are appropriate in an initial post-conviction application. *Logan v. State*, 2013 OK CR 2, ¶ 5, 293 P.2d 969, 973. However, to prevail Petitioner must demonstrate both that counsel’s performance was deficient and resulted in prejudice, i.e., that but for the deficient performance the outcome of the appeal would have been different. *Strickland v. Washington*, 466 U.S. 668, 695 (1984). The analysis requires an examination of the merits of the omitted issue. *Logan*, 2013 OK CR 2, ¶ 6, 293 P.3d at 973-74.



WILLIAM J. MUSSEMAN, Vice Presiding Judge



DAVID B. LEWIS, Judge

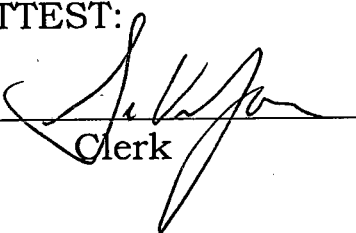


ROBERT L. HUDSON, Judge



SCOTT ROWLAND, Judge

ATTEST:



Clerk

Appendix B



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

CHARLES ANTHONY HOLMES,)
)
Petitioner,)
vs.)
)
STATE OF OKLAHOMA,)
)
Respondent.)

Case No. CF-2022-3296

Judge Guten

DISTRICT COURT
FILED

JUL 08 2025

ORDER DISMISSING PETITIONER'S
APPLICATION FOR POST-CONVICTION RELIEF

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Petitioner's Application for Post-Conviction Relief comes before this Court for consideration under the Post-Conviction Procedure Act, 22 O.S. §§ 1080-1089. This Court has reviewed the Application and the records in rendering its decision. This Court finds that the Application fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74.

STATEMENT OF THE CASE

A jury convicted Petitioner of Assault with a Dangerous Weapon and Assault and Battery. On October 20, 2023, this Court sentenced Petitioner in accordance with the jury's recommendation to a total of 30 years imprisonment.

Petitioner appealed, and he raised the following propositions of error:

1. Mr. Holmes's constitutional right to a fair trial under the United States and Oklahoma Constitutions was violated when he was denied his right to a jury comprised of a fair cross-section of the community;
2. Mr. Holmes was denied the effective assistance of counsel because counsel failed to properly and timely objection to the violation of Mr. Holmes' right to a jury comprised of a fair cross-section of Tulsa County residents;
3. There was insufficient evidence to support conviction for assault with a dangerous weapon because Mr. Holmes did not have intent to cause bodily injury;

4. There was insufficient evidence to support conviction for assault with a dangerous weapon because the state failed to prove Mr. Holmes used a dangerous weapon;
5. Mr. Holmes was denied a fair trial by the court's failure to give an instruction on mutual combat;
6. Mr. Holmes was denied a fair trial due to the prosecutor's improper closing argument;
7. The trial court erred by overruling Mr. Holmes's request for mistrial due to an accumulation of jury error;
8. The trial court erred by imposing a sentence other than the one pronounced at the sentencing hearing;
9. Mr. Holmes received an excessive sentence;
10. The cumulative effect of all errors denied Mr. Holmes a fair trial.

The Oklahoma Court of Appeals denied each of his propositions and affirmed judgment and sentence. *State v. Holmes*, F-2023-0875 (April 24, 2025) (not for publication).

Now, Petitioner presents his First Application for Post-Conviction Relief filed on June 12, 2025. In it, he relays the following claims he believes entitle him to relief:

1. Title 21 O.S. § 645, 644B are unconstitutional, as applied to Petitioner, because they violated the Second Amendment to the United States Constitution.
2. Appellate Counsel was ineffective for failing to raise or adequately raise the following issues, which, if they had been fully and adequately raised, would have resulted in a favorable ruling by the Oklahoma Court of Criminal Appeals.
 - a. Title 21 O.S. § 645, 644B are unconstitutional, as applied to Petitioner, because they violate the Second Amendment to the United States Constitution.
 - b. Appellate Counsel failed to adequately raise that Petitioner's sentence was excessive.
 - c. Appellate Counsel failed to adequately raise that the law enforcement officer, in violation of statute, offered legal advice to the alleged victim in the case that the victim *should* file charges.
 - d. Trial Counsel failed to investigate Petitioner's Indian/freedman status and Appellate Counsel failed to adequately raise that trial counsel's failure to investigate Petitioner's Indian/freedman status.

ARGUMENT AND AUTHORITY

Oklahoma's Post-Conviction Procedure Act, 22 O.S. § 1080-1089, provides that the District Court may dismiss an application when it is satisfied "on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction

relief and no purpose would be served by any further proceedings.” 22 O.S. § 1083(B). Accordingly, dismissal on the pleadings is improper where there exists a material issue of fact. *Id.* So, as in the case at bar, where a Petitioner fails to state a meritorious claim for relief and fails to present any material fact for this Court to consider, it should dismiss the application. Petitioner’s Application is fit for dismissal.

I. PETITIONER’S CLAIMS ARE PROCEDURALLY BARRED.

Oklahoma’s Post-Conviction Procedure Act “provides petitioners with very limited grounds upon which to base a collateral attack on their judgments.” *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. The Post-Conviction Procedure Act is not intended to provide a second appeal. *Richie v. State*, 1998 OK CR 26, 957 P.2d 1192. Accordingly, “[i]t is not the office of the Post-Conviction Procedure Act, 22 O.S.1991, § 1080 *et seq.* to provide a second appeal under the mask of post-conviction application.” *Thomas v. State*, 1994 OK CR 85, 888 P.2d 522, 525. Finality of judgments is of the utmost importance in the post-conviction posture and should be stressed accordingly:

We will narrowly construe these amendments in accordance with the legislature's intent to honor the principle of finality of judgment. The Post-Conviction Procedure Act is not intended to provide a second appeal. We will consider neither issues raised on direct appeal and therefore barred by *res judicata*, nor issues waived because they could have been raised on direct appeal but were not.

Cannon v. State, 1997 OK CR 13, 933 P.2d 926, 928. This commandment is embodied in the Post-Conviction Procedure Act: “All grounds for relief available to the application under this act must be raised in the original, supplemental or amended application.” 22 O.S. § 1086. The doctrine of *res judicata* procedurally bars issues which were already raised and ruled upon; the doctrine of waiver bars issues which could have been raised on review, but were not. *Id.*; *King v. State*, 2001 OK CR 22, ¶ 4, 29 P.3d 1089, 1090 (noting that petitioner’s claims should have been raised prior to his guilty plea, but most certainly in a direct appeal, and, therefore, his claims were barred). *See*

also *Webb v. State*, 1992 OK CR 38, ¶ 6, 835 P.2d 115, 116, overruled on other grounds (holding that petitioner's third attorney was procedurally barred from raising an ineffective assistance claim in petitioner's *second* application for post-conviction relief).

The Legislature has provided a narrow exception, allowing for subsequent applications when there exists a "sufficient reason" why the grounds for relief were not asserted or inadequately asserted in the prior application. 22 O.S. § 1086. Thus, analysis turns to whether there exists a sufficient reason for not raising them or inadequately raising them in his previous direct appeal. Petitioner makes no showing whatsoever. In fact, Petitioner acknowledges in his Application that he could have raised his Second Amendment claim in his direct appeal. He is barred by § 1086 and waiver to raise them before this Court. Petitioner fails to overcome the procedural bar imposed by 22 O.S. § 1086. Therefore, the Court dismisses Petitioner's Application on this basis.

II. PETITIONER'S APPELLATE COUNSEL WAS NOT INEFFECTIVE.

A. The Standard

Logan v. State, 293 P.3d 969, 2013 OK CR 2, has given courts guidance on how to analyze claims of ineffective assistance of appellant counsel:

In reviewing a claim of ineffective assistance of appellate counsel under *Strickland*, a court must look to the merits of the issues that appellate counsel fails to raise. . . . in the context of ineffective assistance of appellate counsel claims, only an examination of the merits of any omitted issues will reveal whether appellate counsel's performance was deficient (due to failing to raise the omitted issues) and also whether the failure to raise the omitted issues on appeal prejudiced the defendant, i.e., **whether there is a reasonable probability that raising the omitted issues would have resulted in a different outcome in defendant's direct appeal (e.g., a reversal, new trial, new sentencing proceeding, or sentence modification).** . . .

The Court in *Logan* went on to clarify that appellate attorney performance in the *Strickland* context is judged based on the merit of the omitted issues as they relate to the appealed issues:

Appellate attorney performance in the *Strickland* context is judged based upon the relative merit of the omitted issues...The relative merit of the omitted issues—in

relation to any appealed issues—must be evaluated in order to determine whether appellate counsel’s performance was adequate. *Id.*

Further, the Court noted that the prejudice analysis should be addressed first:

This Court emphasizes that it will often be unnecessary to address both the performance prong and the prejudice prong in this context. As with any ineffective assistance claim, an ineffective assistance of appellate counsel claim can often be resolved by a finding that the defendant has failed to establish prejudice, without even addressing the attorney’s performance. Since the prejudice analysis is often more straight-forward, it makes sense to address this issue first. *Id.*

The Court in *Logan* delineated three categories to assist in the omitted issue analysis:

There are essentially three different categories of relative merit in this context: (1) Appellate claims that are “plainly meritorious” or “dead-bang winners,” (2) appellate claims that are meritless, and (3) appellate claims that have merit, but are not plainly or obviously meritorious.

Claims that are plainly meritorious are “appellate claims that are so strong and so obvious deserving of appellate relief that they directly establish both inadequate performance and prejudice. If examination of an omitted issue shows that it was so plainly meritorious that it would have been unreasonable to winnow it out even from an otherwise strong appeal, its omission may directly establish deficient performance. Issues that are plainly meritorious will likewise directly establish prejudice, because plainly meritorious claims would be expected to succeed on appeal. Consequently, plainly meritorious claims will directly establish ineffective assistance of appellate counsel and require some form of relief.

The analysis of claims that are meritless is similarly straightforward. If the reviewing court determines that an omitted issue is meritless, i.e., there is not even a reasonable probability that the claim would have succeeded on appeal, this finding compels the further conclusion that appellate counsel was not ineffective regarding that issue. 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. (“Failure to press meritless claims does not constitute ineffective assistance of counsel.”) An assertion of ineffective assistance of appellate counsel based upon the failure to raise a meritless claim can be summarily rejected.

Appellate claims that are found to have merit because there is a reasonable probability that the claim would have resulted in a favorable result on appeal if it had been raised, but where this conclusion is not obvious or “plain,” i.e., claims where the merit analysis is a “close call,” require a more complex analysis. In such case the finding that the claim has merit likewise establishes prejudice from the failure to raise the omitted claim, and the question becomes whether the appellate attorney’s performance was (in failing to raise the omitted claim) objectively unreasonable. *Id.*

Further, the Court in *Logan* noted:

Generally, only when ignored issues are **clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.**” The reviewing court must consider the relative merit of the omitted issues, in relation to any appealed issues, in order to determine whether appellate counsel’s performance was adequate, applying a **“strong presumption” that the performance was adequate.** *Id.*

Under the *Logan* analysis, Petitioner’s claim is meritless in that there is not even a reasonable probability that this claim would have prevailed on direct appeal.

B. Petitioner’s counsel was not ineffective because the instant claims would *not* have prevailed on direct appeal.

To the extent Petitioner attempts to raise a claim regarding the ineffectiveness of his appellate counsel, he has entirely failed to develop those claims or meet his burden on his application for post-conviction relief to show that his appellate counsel’s performance was deficient and/or that he suffered any prejudice as a result. *See State ex rel. Smith v. Newwirth*, 2014 OK CR 16, 337 P.3d 763. In *Russell v. Cherokee County District Court*, 1968 OK CR 45, 438 P.2d 293, 294, the Court stated:

It is fundamental that where a petition for writ of habeas corpus, or for post-conviction appeal is filed, the burden is upon the Petitioner to sustain the allegations of his petition, and that every presumption favors the regularity of the proceedings had in the trial court. Error must affirmatively appear, and is never presumed.

“Granting any relief based upon bald allegations or suspicions would clearly go against the presumption of correctness we attach to trial proceedings . . .” *Hatch v. State*, 1996 OK CR 37, 924 P.2d 284, 296. Even if the Court were to fill in the gaps of analysis and argument in Petitioner’s Application, Petitioner’s claim of ineffective assistance of appellate counsel is meritless and should be dismissed accordingly.

For the following reasons, each of Petitioner’s claims would not have prevailed upon direct appeal:

a. Title 21 O.S. § 645, 644B are unconstitutional, as applied to Petitioner, because they violate the Second Amendment to the United States Constitution.

The Second Amendment of both the U.S. Constitution and the Oklahoma Constitution protect the right to bear arms, but this right is not absolute and does not provide a person a blank check to assault another person with said arms. *See D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799 (2008). When a knife is used during an assault, the Oklahoma Court of Criminal Appeals has determined 21 O.S. § 645 is the appropriate statute to charge a defendant for said crime. *Conaster v. State*, 1969 OK CR 169, ¶ 9, 455 P.2d 719, 722. Petitioner has failed to support the instant proposition with any evidence. The jury heard the evidence presented at trial and determined Petitioner was guilty of Assault with a Dangerous Weapon. Petitioner has failed to show that the result of his direct appeal would be different if appellate counsel raised the instant claim; therefore, his claim of ineffective assistance of appellate counsel should be denied.

b. Appellate Counsel failed to adequately raise that Petitioner's sentence was excessive.

Petitioner merely states the following in support of his theory of ineffective assistance of appellate counsel: "Petitioner was charged and convicted of possession of a firearm after former conviction of felony. However, the facts of the case showed that Petitioner possessed a weapon that is protected by the Second Amendment right to bear arms and did not use the knife in the manner to cause fear, injury or death." Petitioner is wrong that he was convicted of possession of a firearm. He was convicted for one count of Assault with a Dangerous Weapon and one count of Assault and Battery. Petitioner's appellate counsel did raise that his sentence was excessive. Petitioner has omitted any authority or argument showing that his appellate counsel's performance was deficient and/or how appellate counsel *should have* argued the instant proposition on direct appeal. Petitioner has failed to show that the result of his direct appeal would be different if

appellate counsel raised the instant claim; therefore, his claim of ineffective assistance of appellate counsel is denied.

c. Appellate Counsel failed to adequately raise that the law enforcement officer, in violation of statute, offered legal advice to the alleged victim in the case that the victim *should* file charges.

Petitioner has failed to present any evidence proving the instant claim, and he has further failed to even theorize how the instant claim would have changed the outcome of his direct appeal. Law enforcement talking to a witness about pressing charges is not unlawful, and Petitioner has failed to provide any authority to the contrary. Petitioner has failed to show that the result of his direct appeal would be different if appellate counsel raised the instant claim; therefore, his claim of ineffective assistance of appellate counsel is denied.

d. Trial Counsel failed to investigate Petitioner's Indian/freedman status and Appellate Counsel failed to adequately raise that trial counsel's failure to investigate Petitioner's Indian/freedman status.

First, the Petitioner has failed to sustain his burden to even prove the allegations of this claim. Assuming that the Petitioner is a "freedman," his claim would have failed upon direct appeal. For the purposes of federal criminal jurisdiction, a person is defined as an "Indian" if that person "(1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government." *United States v. Prentiss*, 273 F.3d 1277, 1280 (10th Cir. 2001) (noting that "the fact that the defendant had been recognized as an Indian by a tribe was *not sufficient* to prove his Indian status; some evidence of Indian blood was also necessary") (emphasis added); *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012). The first part of the test can be shown by a Certificate of Degree of Indian Blood ("CDIB") issued by the U.S. Bureau of Indian Affairs ("BIA"). See *Davis v. U.S.*, 192 F.3d 951, 956 (10th Cir. 1999). The "BIA only issues CDIBs to individuals possessing a specific quantum of Indian blood which is determined by reference to the

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's Application for Post-Conviction Relief is DISMISSED.

SO ORDERED this 7th day of July, 2025.


DAVID GUTEN
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

This Court certifies that on the date of filing, a true and correct copy of the above and foregoing Order was placed in the United States Mail with sufficient postage affixed thereto, addressed to:

Charles Anthony Holmes
Howard McLeod Correctional Center
19603 E Whippoorwill Lane
Atoka, OK 74525

-&-

Meghan Hilborn, OBA #33908
Assistant District Attorney
500 South Denver, Suite 900
Tulsa, Oklahoma 74103-3832

DON NEWBERRY, COURT CLERK

BY: 

Deputy Court Clerk