

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

JOSHUA D. STUMP,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. CF 1995-104
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

APPLICATION FOR POST CONVICTION RELIEF
(REQUEST FOR RECOMMENDATION OF APPEAL OUT OF TIME)

COMES NOW the Petitioner, Joshua D. Stump, DOC No. 244572, currently located at the Oklahoma State Reformatory, Post Office Box 514, Granite, OK 73547-0514, by and through his attorney, M. Michael Arnett of the Arnett Law Firm, and hereby applies for an appeal for post conviction appeal under the Post Conviction Procedure Act, Title 22 O.S. Section 1080 *et seq.*, and under Rules 2.1(E) and 5.2, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2001).

The sentence from which the Defendant seeks relief is as follows:

1. (a) Court in which sentence was rendered: Lincoln County
(b) Case No.: CF 1995-104
2. Date of sentence: April 25, 1996
3. Terms of the sentence: Murder in the Second Degree
4. Name of Presiding Judge: Paul M. Vassar
5. Is the Defendant now in custody serving this sentence? Yes () No ()

- 6. For what crime or crimes are you convicted? Murder in the Second Degree
- 7. Check whether the finding of guilty was made:
 After plea of guilty () After plea of not guilty ()
- 8. If found guilty after plea of not guilty, check whether the finding was made by:
 A jury () A judge without a jury () N/A ()
- 9. Name the lawyer who represented you in a trial court: James T. Rowan
- 10. Was your lawyer hired by you or your family? Yes () No ()
 Appointed by the court? Yes () No ()
- 11. Did you appeal the conviction? Yes () No ()
 To what court or courts? _____
- 12. Did a lawyer represent you for the appeal? Yes () No () N/A ()
 Was it the same lawyer as No. 9 above? Yes () No () N/A ()
 If "No", what is the lawyer's name? _____
 Address? _____
- 13. Was an opinion written by the appellate Court? Yes () No () N/A ()
 If "Yes", give the citations if published: _____

 If not published, give the appellate case number: _____
- 14. Did you seek any further review of or relief from your conviction at any other
 time in any court? Yes () No ()
 If "Yes", state when you did so, the nature of your claim and the result (include
 citations to any reported opinions): N/A

PART B

I believe that I have two (2) proposition(s) for relief from the conviction and sentence described in Part A . See Brief in Support for Post Conviction Relief.

- 1. Of what legal right or privilege do you believe you were deprived in your case.
See Brief in Support of Application for Post Conviction Relief.
- 2. In the facts of your case, what happened to deprive you of that legal right or
 privilege and who made the error of which you complain.
See Brief in Support of Application for Post Conviction Relief.

- 3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case.
See Brief in Support of Application for Post Conviction Relief.
- 4. How do you think you could now prove the facts you have stated in answer to question No. 2 above?
See Brief in Support of Application for Post Conviction Relief.
- 5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own.
See Brief in Support of Application for Post Conviction Relief.
- 6. Is this a proposition that could have been raised on Direct Appeal?
Yes () No ()
Explain: See Brief in Support of Application for Post Conviction Relief.

PART C

I understand that I have an absolute right to appeal to the Court of Criminal Appeals from the trial court's order entered in this case, but unless I do so within thirty (30) days after the entry of the trial judge's order, I will have waived my right to appeal as provided by Section 1087 of Title 22.

PART D

I have read the foregoing application and assignment(s) of error and hereby state under oath that there are no other grounds upon which I wish to attack the judgment and sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief upon the facts within my knowledge or which I could discover with reasonable diligence at this time.

STATE OF OKLAHOMA)
)
 COUNTY OF _____) SS.

I, Joshua D. Stump, being first sworn under oath, state that I have read the above application for Post Conviction Relief and that the statements therein are true to the best of my knowledge and belief.

 Joshua D. Stump

Subscribed and sworn to before me this ____ day of _____, 200__.

 NOTARY PUBLIC

Commission No. _____

Expires: _____

(Seal)

**IN THE DISTRICT COURT OF LINCOLN COUNTY
STATE OF OKLAHOMA**

JOSHUA D. STUMP,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. CF 1995-104
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

**BRIEF IN SUPPORT OF APPLICATION FOR
POST CONVICTION RELIEF**

STATEMENT OF THE CASE

The Petitioner, Joshua D. Stump pled guilty to the charges in Case No. CF 1995-104 on April 25, 1996. Petitioner was represented by James T. Rowan in the trial court. Petitioner has never filed for an appeal or withdrawal of his plea since the date of his plea of guilty in either case.

STATEMENT OF FACTS

1. On April 25, 1996, Petitioner pled guilty in Case No. CF 1995-104 and was ordered to serve seventy-five (75) years in the custody of the Department of Corrections. (See Judgment and Sentence attached hereto as Exhibit "A" and made a part hereof.)
2. James T. Rowan was Petitioner's attorney of record for the above case. (See Exhibit "A" attached hereto.)
3. Petitioner answered several questions to the plea form incorrectly making the plea form facially deficient, in that he answered: "NO" to the question, "Have you been forced, abused, mistreated, or promised anything by anyone to have you

enter your plea?"; and "YES" to the question, "Do you plead guilty of your own free will and without any coercion or compulsion of any kind?"

4. Petitioner states that his attorney did not assist him effectively and he states that his attorney advised him that a plea of guilty with a sentence of 75 years was the only option in this matter even though Defendant did not commit murder. Trial counsel assured Defendant that by accepting this plea agreement, he would be paroled within seven to nine years.
5. Petitioner states his factual basis for the plea is that he was not entering this plea freely and voluntarily; rather on advice of his counsel that his release would be within seven to nine years. Based on assurances of counsel, Defendant did not follow the appeal process that was available to him at the time of entry of his plea.

ARGUMENTS AND AUTHORITIES

A defendant has a constitutional right to appeal a criminal judgment against him. *Johnson v. State*, 94 P.2d 4 (Okla.Crim.App. 1939). The procedure for appealing a judgment is dictated by the legislature through statutory control and must be followed. *Rodrick v. State*, 412 P.2d 965, 966 (Okla.Crim.App. 1966). The procedures established for criminal proceedings in Oklahoma provide for an appeal out of time when a defendant could not appeal or his appeal was not timely filed through no fault of his own. *Banks v. State*, 953 P.2d 344, 346 (Okla.Crim.App. 1998). The defendant must prepare an application for post-conviction relief to allow the District Court to make findings of fact and conclusions of law as to whether defendant has been denied a direct appeal through no fault of his own. *Webb v. State*, 661 P.2d 904, 905 (Okla.Crim.App. 1983), citing *Smith v. State*, 611 P.2d 276 (Okla.Crim.App. 1980). This issue is the crucial one to appeal out of time. *Id.*

If the failure to appeal was the fault of the defendant, the application for post conviction relief should be denied. *Pueblo v. State*, 799 P.2d 141 (Okla.Crim.App. 1980). But if the District Court makes findings of fact and conclusions of law which find the defendant was denied a direct appeal through no fault of his own, the District Court should grant the application. *Smith*, 611 P.2d at 277. If the District Court so finds that the defendant was denied direct appeal through no fault of his own, the defendant must appeal to the Court of Criminal Appeals, with the District Court's findings and conclusions. *Id.* An attorney's failure to properly perfect a direct appeal may satisfy the standard for an appeal out of time. *See Young v. State*, 902 P.2d 1089 (Okla.Crim.App. 1994); *see also Lozoya v. State*, 932 P.2d 22, 25 (Okla.Crim.App. 1996).

In the present case, Petitioner's plea of guilty form is insufficient and faulty on its face. Several of Petitioner's answers are so wholly incorrect that this plea should be set aside, and Petitioner be allowed to withdraw his plea. Petitioner states on the plea form that he was not being forced, abused, mistreated, or promised anything by anyone to enter his plea and that he was pleading guilty of his own free will and without any coercion or compulsion of any kind.

Petitioner failure to properly perfect Petitioner's appeal should not be held strictly against him when he did not fully understand the terms of the plea into which he was entering, or that the advice of counsel that he would be released within seven to nine years was erroneous. Petitioner was denied his statutory right to withdraw his plea of guilty and constitutional right to appeal through no fault of his own and should be granted an appeal out of time.

CONCLUSION

Petitioner was denied an appeal through no fault of his own. Petitioner's error in failing to file a motion to withdraw his plea of guilty should not be held strictly against him due to the fact his plea form is wholly insufficient on its face.

WHEREFORE, based on the preceding errors, discussion of facts, arguments and citations of legal authority and any errors that this Court may note *sua sponte*, Petitioner prays this Honorable Court to allow Petitioner to withdraw his plea of guilty, and to enter an order finding that Petitioner was denied his right to appeal Petitioner's guilty plea through no fault of his own, grant his Application for Post Conviction Relief to enable Petitioner to file an appeal out of time to the extent that this Court make a recommendation to the Oklahoma Court of Criminal Appeals that Petitioner be granted an appeal out of time, and for such other and further relief Petitioner is entitled.

Respectfully submitted,

By:

M. Michael Arnett, OBA No. 12071
THE ARNETT LAW FIRM
3133 N.W. 63rd Street
Oklahoma City, OK 73116
(405) 767-0522 / Fax (405) 767-0529
ATTORNEY FOR PETITIONER STUMP

CERTIFICATE OF SERVICE

This is to certify that on ____ day of _____, 200__, a true and correct copy of the above and foregoing Application for Post-Conviction Relief was served by depositing the same with the U.S. mail, postage prepaid, to the following:

Office of the District Attorney
One Courthouse, 811 Marvel Ave.
Chandler, OK 74834

M. Michael Arnett