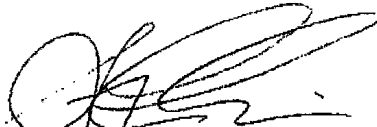


Case 5:05-cv-00397-R Document 29-12 Filed 08/09/2006 Page 2 of 2



GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:



Clerk

INACTIVE

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOSHUA D. STUMP,
Petitioner,

v.

THE STATE OF OKLAHOMA,
Respondent.

RECEIVED
CAPITOL OFFICE
APR 19 2004
#4
ATTORNEY GENERAL

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 16 2004

MICHAEL S. RICHIE
CLERK

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner has filed an appeal in this Court from an order of the District Court of Lincoln County denying his application for post-conviction relief in Case No. CF-95-104. On April 25, 1996, Petitioner, represented by counsel, entered a plea of guilty to Murder in the Second Degree. Petitioner was sentenced to seventy-five (75) years incarceration. Petitioner did not seek to withdraw his plea or otherwise appeal his conviction.

Petitioner filed an application for post-conviction relief in the District Court. On March 1, 2004, the Honorable Paul M. Vassar, District Judge, entered an order denying post-conviction relief. Judge Vassar found Petitioner's claims factually without merit and procedurally barred by the doctrine of waiver due to Petitioner's failure to perfect an appeal from his conviction.

After a review of the pleadings filed in this case, we find Petitioner has not established entitlement to relief, and therefore **AFFIRM** the order of the District Court. The Post-Conviction Procedure Act is not a substitute for a direct appeal. *Maines v. State*, 1979 OK CR 71 at ¶ 5, 597 P.2d 774. Any claim that could have been raised on direct appeal, but was not, is waived and may not be the

EXHIBIT
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basis of a post-conviction application. 22 O.S.1991, § 1086; Rules 2.1(B) & 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2001). The issue(s) raised by Petitioner in his application for post-conviction relief could have been raised on direct appeal but were not. Petitioner has not established any error in the District Court's ruling, and presents no valid reason to this Court why the matter presented in his application for post-conviction relief is not procedurally barred due to his failure to appeal.

Further, Petitioner's quest for an out of time appeal needs to begin in the District Court, not this Court. See Rules 2.1(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2004). Relief is **DENIED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 16th day of April, 2004.




CHARLES A. JOHNSON, Presiding Judge




STEVE LILE, Vice Presiding Judge




GARY L. LUMPKIN, Judge



CHARLES S. CHAPEL, Judge



RETA M. STRUBHAR, Judge

ATTEST:


Clerk

Oklahoma District Court Records

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Case Detail

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County Lincoln - County Last Updated: 08/03/2006 16:00
Case CF-96-00104
 STATE OF OKLAHOMA vs. STUMP, JOSHUA DANIEL
Date Filed 07/17/1995
Amount owed \$424.00 (as of 08/03/2006 16:00)

OFFENSE
 MURDER IN THE SECOND DEGREE

PARTIES

Agency LINCOLN COUNTY SHERIFF OFFICE - CHANDLER OK
Officer MATHES, DUANE #1 - CHANDLER OK
Judge VASSAR, PAUL M - CHANDLER OK
DA SMOTHERMON, RICHARD L - CHANDLER OK
Attorney ARNETT, M MICHAEL - Oklahoma City OK
Defendant STUMP, JOSHUA DANIEL

Date	Case Entries	Amount
07/17/1995	FILE INFORMATION	
	COSTS	\$103.00
	VCA	\$20.00
	CLEET	\$4.00
	OSBI	\$3.00
07/17/1995	WARRANT NOTICE OF RIGHTS ISSUED & FILED: 6C	
07/17/1995	CM: STATE -VS- STUMP - JUDGE PAUL M. VASSAR	
	CAUSE CALLED FOR PRELIMINARY ARRAIGNMENT; STATE	
	PRESENT BY BARNEY K. BARNETT, ASSISTANT DISTRICT	
	ATTORNEY; DEFENDANT PRESENT IN PERSON; RECORD TAKEN	
	BY JANE MCCLAIN, DEFENDANT ADVISED OF CONSTITUTIONAL	
	RIGHTS; UPON THE COURTS OWN MOTION, O.I.D.S. APPOINTED	
	AS ATTORNEY; STATE PRESENTS EVIDENCE; 1 WITNESS	
	SWORN; TESTIMONY INTRODUCED; STATE REST; BASED UPON	
	TESTIMONY PRESENTED, IT IS THE ORDER OF THE COURT THAT	
	THE DEFENDANT REMAIN IN THE CUSTODY OF THE LINCOLN	
	COUNTY SHERIFF TO BE HELD WITH NO BAIL ALLOWED;	
	FURTHER HEARING TO BE HELD JULY 21, 1995, AT 10:00 A.M.	

EXHIBIT

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<http://www.odcr.com/detail.php?Case=041-CF++9500104&County=041->

	BEFORE JUDGE DAVID WELCH IN COURT ROOM #2:	
07/21/1995	(MINUTE ON PAGE 2)	
07/21/1995	CM: STATE -VS- STUMP JUDGE WELCH	
	STATE PRESENT BY BARNEY BARNETT, ASST. D.A.: DEFENDANT	
	PRESENT AND BY O.I.D.S. ATTY., DAVID BALL: RECORD	
	TAKEN: PRELIMINARY HEARING SET FOR SEPT. 8, 1995 AT	
	10:00: DEFENDANT REMANDED TO THE SHERIFF:	
08/30/1995	SUBPOENA: ISSUED (OK CO.SHERIFF DEPT.)	\$20.00
08/30/1995	SUBPOENA: ISSUED (LINCOLN CO)	\$120.00
09/01/1995	MOTION TO ENDORSE ADDITIONAL WITNESSES AND ORDER:	
	FILED	
09/08/1995	MOTION TO CERTIFY DEFENDANT AS A JUVENILE: FILED	
09/08/1995	CM: STATE -VS- STUMP JUDGE WELCH	
	O.I.D.S. ATTY., PATRICK THOMPSON APPOINTED FOR THE	
	JUVENILE WITNESS, NIKI CULLAM:	
09/08/1995	CM: STATE -VS- STUMP JUDGE WELCH	
	CAUSE CALLED FOR PRELIMINARY HEARING: STATE PRESENT BY	
	BARNEY BARNETT, ASST. D.A.: DEFENDANT PRESENT AND BY	
	O.I.D.S. ATTY., DAVID BALL: O.I.D.S. ATTY., PATRICK	
	THOMPSON PRESENT FOR WITNESS, NIKI CULLAM: RECORD	
	TAKEN: STATE MOVES FOR CONTINUANCE: SUSTAINED:	
	PRELIMINARY HEARING CONTINUED TO NOV. 17, 1995 AT 9:00	
	A.M.: ALL SUBPOENAED WITNESSES TO TAKE NOTICE OF DATE:	
	DEFENDANT REMANDED TO THE SHERIFF:	
09/12/1995	SUBPOENA RTD ATTD SERVED MIKE COLLINS, OSBI AGENT,	
	LATENT PRINTS, BALLISTIC TEH, FORENSIC TECHNICIAN BY	
	T. WOOD, OKLAHOMA COUNTY SHERIFF DEPT.: FILED	
09/13/1995	WARRANT NOTICE OF RIGHTS RTD. ATTD. SERVED JOSHUA D.	
	STUMP ON 1-17-95 IN PESON AT CHANDLER COURTHOUSE BY	
	DAUNE MATHIS AND RETURN OF WARRANT NOTICE OF RIGHTS BY	
	SERVING DEPARTMENT OF HUMAN SERVICES JULY 17, 1995 BY	
	DUANE MATHES: FILED	
10/20/1995	SUBPOENA RTD. ATTD SERVED CLIFFORD ANDERSON, DAVID	
	ARMITAGE AND MIKE MADDEN: BY ARLOE BOWERMAN AND MISTY	
	VASQUEZ AND NIKI CULLAM NOT FOUND BY ARLOE BOWERMAN,	
	LCSSO: FILED	
10/23/1995	SUBPOENA: ISSUED (OKLAHOMA COUNTY)	\$20.00
10/23/1995	SUBPOENA: ISSUED (TO LINCOLN COUNTY)	\$120.00
10/27/1995	SUBPOENA RTD ATTD SERVED JACKI JOHNSON, MIKE COLLINS,	
	RON JONES 10-25-95 BY D.R. WILLIAM, OKLAHOMA COUNTY	
	SHERIFF OFFICE: FILED	
11/15/1995	SUBPOENA: ISSUED (TO ATTY)	\$20.00

11/15/1995	SUBPOENA RTD ATTD SERVED JUDY CULLUM NIKKI L. CULLUM BY DAUNE MATHES, LCSO 11-15-95, RICK CULLUM NOT FOUND BY DAUNE MATHES, LCSO: FILED	
11/18/1995	CERTIFICATION TO COURT CLERK (WITNESS FEE) JUDY CULLUM	\$14.00
11/15/1995	CM: STATE -VS- STUMP JUDGE VASSAR CAUSE CALLED FOR HEARING ON CONDITIONAL IMMUNITY HEARING: STATE PRESENT BY BARNEY K. BARNETT, ASSISTANT DISTRICT ATTORNEY; WITNESS PRESENT IN PERSON AND BY HER ATTORNEY, PATRICK A. THOMPSON; ATTORNEY FOR THE DEFENDANT, DAVID T. BALL PRESENT IN THE COURT ROOM; RECORD TAKEN BY TRISH WBLE; THE ATTORNEY FOR THE DEFENDANT REQUEST THE DEFENDANT TO BE PRESENT IN THE COURT ROOM; REQUEST DENIED; 2 WITNESSES SWORN; TESTIMONY INTRODUCED; THE COURT FINDS THAT THE CONDITIONAL IMMUNITY SHOULD BE APPROVED AND GRANTED AS SET FORTH IN THE AGREEMENT; IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT THE GRANT OF CONDITIONAL IMMUNITY IS APPROVED AND GRANTED; IT IS FURTHER ORDERED THAT THE AGREEMENT BE FILED UNDER SEAL IN THIS CASE SUBJECT TO THE GUIDELINES SET FORTH IN HARRIS V. HARRIS, 841 P.2D 597 (OKLA. CR. 1992). ALL AS PER ORDER:	
11/15/1995	AGREEMENT FILED:(SEALED)	
11/15/1995	ORDER FILED:	
11/16/1995	SUPBOENA RETURNED; MIKE MADDEN, DUANE MATHES, MIGUIL MENDOZA, HUBERT MOUCHA, MISTY D. VASQUY, NIKKI LYNN CULLUM, CLIFFORD ANDERSON SERVED 11-15-95; FILED:	
11/17/1995	MOTION TO ENDORSE ADDITIONAL WITNESSES AND ORDER: FILED RESTS: ARGUMENT BY COUNSEL: MOTION OVERRULED: STATE CONTINUES EVIDENCE. PRELIMINARY HEARING CONTINUED TO DEC. 4, 1995 AT 1:30 P.M.: DEFENDANT REMANDED TO THE SHERIFF.	
11/28/1995	SUBPOENA DUCES TECUM RTD ATTD SERVED ROSE VAUGHN 11-28-95 BY DAVID BRATIEM BURKS, AMERICAN INVESTIGATIVE, OKC, OK: FILED	
12/01/1995	SUBPOENA: ISSUED (TO ATTY)	
12/04/1995	CM: JUDGE WELCH PRELIMINARY HEARING CONTINUED TO PREVIOUS DATE: STATE PRESENT BY MILES ZIMMERMAN, D.A.: DEFENDANT PRESENT AND BY OIDS, ATTY., DAVID BALL: RECORD CONTINUED: STATE RESTS: DEFENDANT'S MOTION TO CERTIFY AS A JUVENILE:	

	SWEAR 6 WITNESSES: TEST.INTRO.: DEFENDANT PRESENTS	
	EVIDENCE ON MOTION AND RESTS: STATE MOVES THAT THE	
	EVIDENCE TAKEN ON THE PRELIMINARY HEARING TO	
	INCORPORATED AND CONSIDERED EVIDENCE PRESENTED AND	
	RESTS: ARGUMENT BY COUNSEL: MOTION DENIED: DEFENDANT	
	PRESENT EVIDENCE: STIPLATIONS ENTERED: DEFENDANT RESTS:	
	ARGUMENT BY COUNSEL: COURT FINDS THAT THE CRIME OF	
	MURDER, FIRST DEGREE HAS BEEN COMMITTED IN	
	LINCOLN COUNTY, OKLAHOMA AND THAT THERE IS PROBABLE	
	CAUSE TO BELIEVE THE DEFENDANT GUILTY THEREOF AND	
	ORDERED HELD FOR TRIAL NEXT TERM OF DISTRICT COURT:	
	FURTHER ARRAIGNMENT ON WED., DEC. 13, 1995 AT 1:30 P.M.	
	IN COURT ROOM NO. 1: DEFENDANT REMANDED TO THE SHERIFF	
	TILL BOND IS MADE AND APPROVED:	
12/06/1995	AMENDED FELONY INFORMATION: FILED	
12/11/1995	ENTRY OF APPEARANCE AND MOTION TO CONTINUE ARRAIGNMENT:	
	FILED	
12/13/1995	CM: STATE -VS- STUMP JUDGE VASSAR	
	CAUSE CALLED FOR ARRAIGNMENT: STATE PRESENT BY BARNEY	
	K. BARNETT, ASSISTANT DISTRICT ATTORNEY; UPON THE	
	MOTION OF O.I.D.S. ATTORNEY, ROWANS AND THE STATE,	
	ARRAIGNMENT PASSED TO DECEMBER 20, 1996, AT 1:30 P.M.:	
12/14/1995	MOTION TO ENDORSE ADDITIONAL WITNESS AND ORDER: FILED	
12/20/1995	BILL OF PARTICULARS REQUEST FOR IMPOSITION OF THE DEATH	
	PENALTY: FILED	
12/20/1995	CM: MOTION DOCKET JUDGE VASSAR	
	CAUSE CALLED FOR ARRAIGNMENT: STATE PRESENT BY BARNEY	
	K. BARNETT, ASSISTANT DISTRICT ATTORNEY; DEFENDANT	
	PRESENT IN PERSON AND BY O.I.D.S. ATTORNEY, DAVID T.	
	BALL AND JAMES T. ROWAN; RECORD TAKEN BY TRISH WIBLE;	
	THE DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS;	
	DEFENDANT ENTERS A PLEA OF NOT GUILTY; DEFENDANT	
	ORDERED TO REAPPEAR ON JANUARY 23, 1996 AT 9:30 A.M.	
	FOR FELONY DISPOSITION DOCKET; JURY TRIAL SET FOR	
	FEBRUARY 5, 1996, AT 9:00 A.M.: THE DEFENDANT REMANDED	
	TO THE CUSTODY OF THE SHERIFF:	
12/27/1995	CM: STATE -VS- STUMP JUDGE PAUL VASAR	
	STATE PRESENT BY BARNEY K. BARNETT, ASST. D.A.:	
	DEFENDANT BY AND THROUGH OIDS ATTORNEY, DAVID BALL:	
	RECORD TAKEN BY TRISH WIBLE: DEFENDANT REQUESTS	
	TRANSCRIPT OF PRELIMINARY HEARING AT STATE'S EXPENSE:	
	TRANSCRIPT ORDERED PREPARED AT STATE'S EXPENSE	

	WITH DEFENDANT'S ATTORNEY TO PREPARE AND SUBMIT WRITTEN	
	MOTION AND ORDER:	
12/27/1995	MOTION FOR TRANSCRIPTION OF PRELIMINARY HEAR & ORDER:	
	FILED	
12/29/1995	DEFENDANT'S MOTION FOR DISCOVERY: FILED	
01/03/1996	MOTION TO PRODUCE: FILED	
01/03/1996	CM: JUDGE VASSAR	
	CAUSE CONTINUED TO JANUARY 24, 1996 AT 1:30 P.M.:	
01/05/1996	SETTING OF FELONY DISPOSITION DOCKET: FILED	
01/12/1996	MOTION IN LIMINE RE: PURPORTED QUALIFICATIONS OF TOM	
	BEVEL: FILED	
01/12/1996	MOTION TO STRIKE DUPLICITOUS AGGRAVATING	
	CIRCUMSTANCE: FILED	
01/12/1996	DEFENDANT'S LIST OF PRETRIAL MOTIONS FILED JANUARY 12	
	1996: FILED	
01/12/1996	DEMURRER & MOTION TO QUASH INFORMATION: FILED	
01/12/1996	NOTICE OF INTENT TO OFFER EVIDENCE OF PRIOR GOVERNMENT	
	ADMISSION: FILED	
01/12/1996	MOTION IN LIMINE RE: PHYSICAL & FORENSIC EVIDENCE: FILE	
01/12/1996	MOTION TO PROHIBIT JURY DISPERSAL & TO PROHIBIT JURY'S	
	EXPOSURE TO VICTIM'S FAMILY OR FRIENDS: FILED	
01/12/1996	DEFENDANT'S OBJECTION TO VERDICT FORM RE: 'CONTINUING	
	TREAT': FILED	
01/12/1996	MOTION TO STRIKE UNADJUDICATED OFFENSES ALLEGED IN	
	SUPPORT OF 'CONTINUING THREAT' AGGRAVATING	
	CIRCUMSTANCE: FILED	
01/12/1996	MOTION IN LIMINE REGARDING INTRODUCTION OF AUTOPSY	
	PHOTOGRAPHS: FILED	
01/12/1996	MOTION IN LIMINE RE: CALDWELL: FILED	
01/12/1996	MOTION TO ALLOW VOIR DIRE ON TH COST-EFFECTIVENESS OF	
	THE DEATH PENALTY: FILED	
01/12/1996	MOTION TO ENJOIN VICTIM'S FAMILY AND/OR VICTIM'S RIGHTS	
	ADVOCATES FROM SHOWING EMOTION IN THE COURTROOM WHILE	
	SETTING AS SPECTATORS AND BRIEF IN SUPPORT	
	THEREOF: FILED	
01/12/1996	MOTION TO ENDORSE ALL 'JAIL HOUSE' INFORMANTS AND	
	SNITCHES: FILED	
01/12/1996	MOTION TO INVOKE RULE PRIOR TO VOIR DIRE, PROHIBIT	
	WITNESSES FORM CONVCRSING, AND TO ENJOIN THE DISTRICT	
	ATTORNEY FROM ADVISING OF PREVIOUS TESTIMONY: FILED	
01/12/1996	MOTION FOR PRODUCTION OF JUROR LIST: FILED	
01/12/1996	MOTION FOR VOIR DIRE ON THE DEATH PENALTY: FILED	

01/12/1996	MOTION TO ALLOW EVIDENCE RE: LIFE WITHOUT THE POSSIBILITY OF PAROLE: FILED
01/12/1996	MOTION TO PRECLUDE PROSECUTION FROM USING PEREMPTORY CHALLENGES TO EXCLUDE MINORITY RACES OR POOR JURORS: FILED
01/12/1996	MOTION FOR HEARING ON RELIABILITY OF 'JAIL HOUSE' INFORMANTS: FILED
01/12/1996	OBJECTION TO STANDARDS OF COUNSEL IMPOSED BY UNITED STATES SUPREME COURT AND NOTICE OF NON-WAIVER OF ISSUES AND OBJECTIONS: FILED
01/12/1996	DEFENDANT'S OBJECTION TO STANDARY JURY INTRUSCTIONS RE: EVALUATION OF MITIGATING EVIDENCE: FILED
01/12/1996	DEFENDANT'S OBJECTION TO UNIFORM JURY INSTRUCTIONS RE: FINDING OF UNANIMITY WITH RESPECT TO MITIGATING
01/12/1996	MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES AND BRIEF IN SUPPORT THEREOF: FILED
01/12/1996	MOTION TO PRECLUDE PRETRIAL EXEMPTION, PRETRIAL EXCUSAL OR PEREMPTORY EXCUSAL OF POOR JURORS, OR IN THE ALTERNATIVE, QUASH TH ARRAY: FILED
01/12/1996	MOTION FOR DISCOVERY OF PRIOR JURY SERVICE: FILED
01/12/1996	MOTION FOR JURY QUESTIONNAIRE: FILED
01/12/1996	BRIEF IN SUPPORT OF MOTION TO SUBMIT QUESTIONNAIRE TO: PROSPECTIVE JURORS: FILED
01/12/1996	MOTION IN LIMINE RE: REMORSE: FILED
01/12/1996	MOTION TO PROHIBIT PROSECUTION FROM EXCLUDING POTENTIAL JURORS WHO EXPRESS RESERVATIONS REGARDING THE DEATH PENALTY AND BRIEF IN SUPPORT THEREOF: FILED
01/12/1996	MOTION TO REQUIRE THE STATE TO PROVIDE VICTIM IMPACT STATEMENTS PRIOR TO TRIAL AND REQUEST FOR EVIDENTIARY HEARING AND BRIEF IN SUPORT THEREOF: FILED
01/12/1996	MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE OF JURORS AS FAR AS DEATH PENALTY IN CONCERNED: FILED
01/12/1996	BRIEF IN SUPPORT OF MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE: FILED
01/19/1998	MOTION FOR CONTINUANCE: FILED
01/19/1996	CM: JUDGE VASSAR CAUSE CALLED FOR HEARING ON THE DEFENDANT'S MOTION FOR CONTINUANCE; STATE PRESENT BY MILES C. ZIMMERMAN, DISTRICT ATTORNEY; DEFENDANT PRESENT IN PERSON AND BY AIDS ATTORNEY, JAMES T. ROWAN; RECORD TAKEN BY TRISH WIBLE; ARGUMENTS PRESENTED ON MOTION FOR CONTINUANCE; MOTION FOR CONTINUANCE GRANTED; JURY TRIAL CONTINUED

	TO MARCH 25, 1996 AT 9:00 A.M.; IT IS FURTHER ORDERED	
	THAT THE SAME JURY POOL CALLED FOR FEBRUARY WILL BE	
	CALLED FOR THIS CASE; BOTH PARTIES GRANTED UNTIL	
	JANUARY 24, 1996 TO FILE MOTIONS BEING HEARING ON	
	JANUARY 31, 1996; IT IS FURTHER ORDERED THAT ANY	
	OUTSTANDING MOTIONS WILL BE HEARD FEBRUARY 23, 1996 AT	
	2:30 P.M.; BOTH PARTIES GRANTED LEAVE TO FILE MOTIONS	
	BEYOND THE JANUARY 24, 1996 DATE; ANY OUTSTANDING	
	MOTIONS WILL BE HEARD FEBRUARY 23, 1996 AT 2:30 P.M.;	
	ALL MOTIONS MUST BE ON FILE ON/OR BEFORE FEBRUARY 14,	
	1996 BY 4:00 P.M.; THE DEFENDANT REMANDED TO THE	
	CUSTODY OF THE SHERIFF TO AWAIT TRIAL.	
01/24/1996	BURKS' NOTICE OF INTENT TO INTRODUCE EVIDENCE OF	
	SEPARATE CRIMES AT TRIAL: FILED	
01/24/1996	CM: JUDGE VASSAR	
	STRICKEN FROM MOTION DOCKET:	
01/31/1996	CM: JUDGE VASSAR	
	CAUSE STRICKEN FROM MOTION DOCKET:	
02/09/1996	THE DEFENDANT'S MOTION TO STRIKE 'CONTINUING THREAT'	
	AGGRAVATION CIRCUMSTANCE AS UNCONSTITUTIONAL AND ON	
	GROUNDS OF INSUFFICIENT EVIDENCE AND BRIEF IN SUPPORT:	
	FILED	
02/09/1996	TRANSCRIPT OF PRELIMINARY HEARING: FILED	
02/09/1996	DISTRICT ATTORNEY'S OFFICE CHECK OUT PRELIMINARY	
	HEARING	
02/14/1996	OIDS CHECKS OUT PRELIMINARY HEARING TRANSCRIPT:	
02/22/1996	APPLICATION FOR HEARING ON MATERIAL WITNESS WARRANT:	
	FILED	
02/22/1996	ORDER SETTING CAUSE FOR HEARING: FILED	
02/23/1996	STATE'S RESPONSE TO DEFENDANT'S MOTIONS: FILED	
02/23/1996	STATE'S SECOND RESPONSE TO DEFENDANT'S MOTIONS: FILED	
02/23/1996	CM: JUDGE VASSAR	
	CAUSE CALLED FOR HEARING ON MOTIONS; STATE PRESENT BY	
	BARNEY K. BARNETT, ASSISTANT DISTRICT ATTORNEY;	
	DEFENDANT PRESENT IN PERSON AND BY O.I.D.S. ATTORNEYS,	
	JAMES T. ROWAN AND CO-COUNSEL; RECORD TAKEN BY TRISH	
	WIBLE; ARGUMENTS PRESENTED ON MOTIONS; DEFENDANT'S	
	MOTION FOR DISCOVERY PREVIOUSLY CONFESSED; STATE'S	
	MOTION FOR PRODUCTION PREVIOUSLY CONFESSED;	
	DEFENDANT'S MOTION TO DISCOVERY SUSTAINED; THE STATE'S	
	PHYSICAL EVIDENCE IS AVAILABLE FOR THE DEFENSE TO	
	EXAMINE; THE DEFENDANT'S MOTION IN LIMINE IN RE, THE	

QUALIFICATIONS OF PAUL BEVEL; OVERULED; THE	
DEFENDANT'S MOTION TO STRIKE 'CONTINUING THREAT'	
AGGRAVATING CIRCUMSTANCE AS UNCONSTITUTIONAL AND ON	
GROUNDS OF INSUFFICIENT EVIDENCE FILED JANUARY 12, 1996;	
OVERULED; THE DEFENDANT GIVEN LEAVE TO RAISE ISSUE AT	
LATER DATE; THE DEFENDANT'S MOTION TO STRIKE	
'CONTINUING THREAT' AGGRAVATING CIRCUMSTANCE AS	
UNCONSTITUTIONAL AND ON GROUNDS OF INSUFFICIENT	
EVIDENCE FILED 2-9-96; OVERULED; THE STATE ASK LEAVE	
TO ENDORSE ALL WITNESSES PRIOR TO THE PRELIMINARY	
HEARING WHICH WERE OMITTED FROM THE AMENDED	
INFORMATION; THE COURT ORDERS THE STATE TO PROVIDE	
ANADDENDUM TO THE AMENDED INFORMATION AS PERTAINS TO	
WITNESSES ENDORSED FILED ON/OR BEFORE 5:00 P.M.	
FEBRUARY 27, 1996; THE DEFENDANT IS TO FILE A BRIEF AS	
TO WHY THE INFORMATION IS DEFECTIVE BEFORE FRIDAY,	
MARCH 1, 1996; ARGUMENTS PRESENTED ON THE DEFENDANT'S	
LIST OF PRETRIAL MOTIONS FILED JANUARY 12, 1996; 1. THE	
DEMUR AND MOTION TO QUASH INFORMATION; OVERULED; THE	
DEFENDANT TO FILE BRIEF BY WEDNESDAY, FEBRAURY 28,	
1996; THE STATE TO RESPOND BY FRIDAY, MARCH 1, 1996. IN	
REGARDS TO DEFECTIVE INFORMATION; 2. THE DEFENDANT'S	
NOTICE OF INTENT TO OFFER EVIDENCE OF PRIOR GOVERNMENT	
ADMISSION, SUSTAINED, WITH THE QUALIFICATION THAT THE	
DISTRICT ATTORNEY WILL NOT BE ALLOWED TO TAKE THE	
STAND; THE DEFENDANT IS ORDERED TO SHEPARDIZE AND	
ADVISE THE COURT OF HIS FINDINGS; 3. THE DEFENDANT'S	
MOTION IN LIMINE IN REGARDS TO PHYSICAL AND FORENSIC	
EVIDENCE IS TAKEN UNDER ADVISEMENT; 4. THE DEFENDANT'S	
MOTION TO PROHIBIT JURY DISPERSAL AND TO PROHIBIT JURY'S	
EXPOSURE TO THE VICTIM'S FAMILY OR FRIENDS; SUSTAINED;	
THE COURT PRESENTS RULES AS TO THE EXITS AND ENTRIES OF	
THE JURORS AFTER IMPANELED; 5. THE DEFENDANT'S	
OBJECTION TO THE VERDICT FORM IN REGARDS TO 'CONTINUING	
THREAT'; OVERULED; THE DEFENDANT IS GIVEN LEAVE TO	
REASURT MOTION; 6. THE DEFENDANT'S MOTION TO STRIKE	
UNADJUDICATED OFFENSES ALLEDGED IN SUPPORT OF	
'CONTINUING THREAT' AGGRAVATING CIRCUMSTANCE; OVERULED;	
7. THE DEFENDANT'S MOTION IN LIMINE REGARDING INTRO-	
DUCTION OF AUTOPSY PHOTOGRAPHS; SUSTAINED; 8. THE	
DEFENDANT'S MOTION IN LIMINE IN REGARDS TO CALDWELL;	
SUSTAINED; 9. THE DEFENDANT'S MOTION TO ALLOW VOIR DIRE	

ON THE COST-EFFECTIVENESS OF THE DEATH PENALTY;
OVERULED; 10. THE DEFENDANT'S MOTION TO ENJOIN VICTIM'S
FAMILY AND/OR VICTIM'S RIGHTS ADVOCATED FROM SHOWING
EMOTION IN THE COURT ROOM WHILE SITTING AS SPECTATORS
AND BRIEF IN SUPPORT THEREOF; SUSTAINED; 11. THE
DEFENDANT'S MOTION TO ENDORSE ALL 'JAIL HOUSE'
INFORMANTS; SUSTAINED; 12. THE MOTION TO INVOKE RULE
PRIOR TO VOIR DIRE, PROHIBIT WITNESSES FROM CONVERSING,
AND TO ENJOIN THE DISTRICT ATTORNEY FROM ADVISING OF
PREVIOUS TESTIMONY; SUSTAINED, BUT THE STATE IS NOT
PROHIBITED FROM TALKING TO WITNESSES; 13. MOTION FOR
PRODUCTION OF JUROR LIST; SUSTAINED AS TO VOIR DIRE
WITNESS; THE DISTRICT ATTORNEY DOES NOT MAINTAIN A
SEPARATE LIST; 14. THE DEFENDANT'S MOTION FOR VOIR DIRE
ON THE DEATH PENALTY; TAKEN UNDERADVICE; 15. MOTION
TO ALLOW EVIDENCE IN REGARDS TO LIKE WITHOUT THE
POSSIBILITY OF PAROLE; DENIED; 16. THE DEFENDANT'S
MOTION TO PRECLUDE PROSECUTION FROM USING PEREMPTORY
CHALLENGES TO EXCLUDE MINORITY RACES OR POOR JURORS, IT
IS THE ORDER OF THE COURT THAT 'BATSON' SHALL BE
FOLLOWED; SUSTAINED; POOR PEOPLE DO NOT QUALIFY FOR
'BATSON' CHALLENGES; 17. MOTION FOR HEARING ON
RELIABILITY OF 'JAIL HOUSE' INFORMANTS; SUSTAINED; 18.
THE DEFENDANT'S OBJECTION TO STANDARDS OF COUNSEL
IMPOSED BY THE UNITED STATE SUPREME COURT AND NOTICE OF
NON-WAIVER OF ISSUES AND OBJECTIONS; OVERULED; 19. THE
DEFENDANT'S OBJECTION TO STANDARD JURY INSTRUCTIONS IN
REGARDS TO EVALUATION OF MITIGATING EVIDENCE; OVERULED;
20. THE DEFENDANT'S OBJECTION TO THE UNIFORM JURY
INSTRUCTIONS IN REGARDS TO THE FINDING OF UNANIMITY
WITH RESPECT TO MITIGATING CIRCUMSTANCES; OVERULED; 21.
MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES AND BRIEF
IN SUPPORT THEREOF; OVERULED; 22. MOTION TO PRECLUDE
PRETRIAL EXEMPTION, PRETRIAL EXCUSAL OR PEREMPTORY
EXCUSAL OF POOR JURORS, OR IN THE ALTERNATIVE, QUASH
THE ARRAY; OVERULED AS MOOT; LIST OF JURORS SERVICE
THIS TERM IS AVAILABLE IN THE COURT CLERK'S OFFICE; 24.
MOTION FOR JURY QUESTIONNAIRE (WITH ATTACHED SAMPLE);
SUSTAINED; A QUESTIONNAIRE OF 8-10 PAGES TO BE
SUBMITTED BY AGREEMENT WITH THE COURT TO RESOLVE
DISPUTES; 25. BRIEF IN SUPPORT OF MOTION TO SUBMIT
QUESTIONNAIRE TO PROSPECTIVE JURORS; SUSTAINED; 26.

	MOTION IN LIMINE IN REGARDS TO REMORSE, RULING	
	RESERVED; 27. THE DEFENDANT'S MOTION TO PROHIBIT	
	PROSECUTION FROM EXCLUDING POTENTIAL JURORS WHO EXPRESS	
	RESERVATIONS REGARDING THE DEATH PENALTY AND BRIEF IN	
	SUPPORT THEREOF; OVERULED; 28. THE DEFENDANT'S MOTION	
	TO REQUIRE THE STATE TO PROVIDE VICTIM IMPACT STATEMENTS	
	PRIOR TO TRIAL AND REQUEST FOR EVIDENTIARY HEARING AND	
	BRIEF IN SUPPORT THEREOF; SUSTAINED; WRITTEN IMPACT	
	STATEMENT TO BE FILED WITHIN 10 DAYS PRIOR TO TRIAL; IN	
	CAMERA HEARING RESERVED; 29. MOTION FOR INDIVIDUAL VOIR	
	DIRE OF JURORS AS FAR AS THE DEATH PENALTY IS	
	CONCERNED; MOTION EXPANDED TO INCLUDE THE NEWS MEDIA;	
	MOTION DENIED; 30. BRIEF IN SUPPORT OF INDIVIDUAL,	
	SEQUESERED VOIR DIRE; OVERULED; COUNSEL FOR THE	
	DEFENDANT PRESENT; THE DEFENDANT IS ADVISED OF A	
	MATERIAL WITNESS WARRANT FROM THE STATE OF ARKANSAS TO	
	COMPEL HIS ATTENDANCE AS A WITNESS IN CASE #CF-95-32;	
	THE DEFENDANT IS TO BE RETURNED WITHIN 48 HOURS AFTER	
	HIS RELEASE FROM THAT TRIAL; THE STATE OF ARKANSAS TO	
	PROVIDE WRITTEN ASSURANCE OF ADEQUATE SECURITY UNTIL	
	THE DEFENDANT'S RETURN TO OKLAHOMA; THE DEFENDANT'S	
	ORAL MOTION TO LIMIT THE FILING OF NEW MOTIONS	
	SUSTAINED IN PART; FURTHER MOTIONS TO BE HEARD MARCH	
	13, 1996 AT 1:30 P.M.; THE MOTION TO STRIKE 'CONTINUING	
	THREAT' TO BE RULED ON BY BRIEF WITHOUT FURTHER	
	ARGUMENTS PRESENTED.	
02/27/1996	LIST OF WITNESSES PURSUANT TO CONSTITUTION OF OKLAHOMA	
	ART. 2 S 20 FIRST STAGE: FILED	
02/27/1996	LIST OF WITNESSES PURSUANT TO CONSTITUTION TO	
	CONSTITUTION OF OKLAHOMA ART. 2 S 20 SECOND STAGE:	
	FILED	
02/28/1996	NOTICE OF ANTICIPATED TESTIMONY: ISSUED AND FILED	
02/28/1996	MOTION TO ENDORSE ADDITIONAL WITNESSES: FILED	
02/28/1996	MOTION TO ENDORSE ADDITIONAL WITNESSES: FILED	
02/29/1996	DEFENDANT'S BRIEF IN SUPPORT OF DEMURRER AND MOTION TO	
	QUASH THE INFORMATION: FILED	
02/29/1996	APPLICATION AND AFFIDAVIT: FILED	
02/28/1996	APPLICATION AND AFFIDAVIT: FILED	
02/29/1996	SUBPOENA: ISSUED	
02/29/1996	SUBPOENA: ISSUED	
02/29/1996	SUBPOENA: ISSUED	
02/29/1996	SUBPOENA: ISSUED	

02/29/1996	SUBPOENA: ISSUED	
02/29/1996	SUBPOENA RTD ATTD DAVID ARMITAGE, MIKE MADDEN, DUANE	
	MATHES, COSBY CLARK, BECKY KEPITART, DONALD WHEELER,	
	GARY GREGSON 2-29-96 BY LEEMAN STORY, D.A.	
	INVESTIGATOR: FILED	
03/05/1996	SUBPOENA RTD. ATTD. SERVED JACKIE JOHNSON, MIKE	
	COLLINS, RONALD JONES LATENT FINGERPRINT EXPERT OSBI,	
	FORENSIC TECHNICIAN, BOB TEHUNE, MARK MCCOY, LARRY	
	MULLINS, TOM JORDAN, CHARLES CURTISS, KEITH FERRELL,	
	DOUG PERKINS & JOANNE KAHEGA 3-1-96 BY LEE STORY, DA	
	INVESTIGATOR: FILED	
03/07/1996	APPROVAL: FILED	
03/07/1996	RESPONSE TO DEFENDANT'S MOTION TO QUASH THE	
	INFORMATION: FILED	
03/07/1996	ORDER: FILED	
03/07/1996	THE DEFENDANT'S MOTION TO STRIKE HEINOUS, ATROCIOUS,	
	AND CRUEL AGGRAVATING CIRCUMSTANCE AND BRIEF IN	
	SUPPORT: FILED	
03/07/1996	MOTION FOR CONTINUANCE: FILED	
03/07/1996	NOTICE OF EVIDENCE IN AGGRAVATION TO E OFFERED IN	
	SUPPORT OF DEATH PENALTY: FILED	
03/07/1996	SUPPLEMENTAL BURK'S NOTICE OF INTENT TO INTRODUCE	
	EVIDENCE OF SEPARATE CRIMES AT TRIAL: FILED	
03/11/1996	FAMILY HISTORY (JURY QUESTIONERS)	
03/11/1996	LETTER: FILED	
03/13/1996	DISCOVERY FROM DEFENSE FILED:	
03/13/1996	CM: JUDGE PAUL VASSAR	
	CAUSED CALLED FOR HEARING ON MOTIONS: STATE PRESENT BY	
	BARNEY K. BARNETT: DEFENDANT PRESENT AND BY CAPITOL	
	TRIAL DIVISION ATTORNEY, JAMES T. ROWAN: RECORD TAKEN	
	BY TRISH WIBLE: ARGUMENTS BY COUNSEL: MOTION FOR	
	CONTINUANCE: SUSTAINED: DEFENDANT ADVISED OF RIGHTS TO	
	SPEEDY TRIAL: DEFENDANT WAIVES RIGHTS TO SPEEDY TRIAL:	
	MOTION TO QUASH INFORMATION, MOTION TO STRIKE HEINOUS,	
	ATROCIOUS AND CRUEL AGGRAVATING CIRCUMSTANCE AND BRIEF	
	IN SUPPORT AND ANY OTHER MOTIONS THAT NEED TO BE	
	ADDRESSED SET FOR JULY 10TH AT 9:30 A.M.: CAUSE SET	
	FOR JURY TRIAL JULY 22, 1996: DEFENDANT REMANDED TO	
	CUSTODY OF THE LINCOLN COUNTY SHERIFF:	
03/18/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR CONTINUANCE: FILED	
03/20/1996	LETTER (RELEASING JUVENILE FILES TO OIDS): FILED	
03/28/1996	APPLICATION FOR ORDER FILED:	

04/11/1996	ORDER: FILED	
04/25/1996	SECOND AMENDED FELONY INFORMATION: FILED	
04/25/1996	CM: STATE -VS- STUMP JUDGE VASSAR	
	CAUSE CALLED FOR SENTENCING; STATE PRESENT BY MILES C.	
	ZIMMERMAN, DISTRICT ATTORNEY; DEFENDANT PRESENTY AND BY	
	ATTORNEYS JIM ROWAN & RAND EDDY, O.I.D.S. CAPITAL TRIAL	
	DIVISION; RECORD TAKEN; DEFENDANT ADVISED OF HIS	
	CONSTITUTIONAL RIGHTS; DEFENDANT WAIVES RIGHT TO	
	ADDITIONAL PRELIMINARY HEARING; DEFENDANT SWORN AS TO	
	THE PETITION TO ENTER A PLEA OF GUILTY; PURSUANT TO	
	PLEA NEGOTIATIONS THE DEFENDANT ENTERS A PLEA OF GUILTY	
	TO THE SECOND AMENDED FELONY INFORMATION OF MURDER IN	
	THE SECOND DEGREE; PLEA ACCEPTED; IT IS THE JUDGMENT	
	AND SENTENCE OF THE COURT THAT THE DEFENDANT IS GUILTY	
	AS CHARGED AND SENTENCED TO A TERM OF 75 YEARS WITH THE	
	DEPARTMENT OF CORRECTIONS, PLUS PAY THE COSTS;	
	DEFENDANT WAIVES PRE-SENTENCE INVESTIGATION; DEFENDANT	
	WAIVES THE 10 DAY WAITING PERIOD BEFORE TRANSPORTATION;	
	DEFENDANT REMANDED TO THE CUSTODY OF THE LINCOLN COUNTY	
	SHERIFF TO BE TRANSPORTED;	
04/25/1996	PLEA OF GUILTY SUMMARY OF FACTS: FILED	
05/07/1996	STATEMENT OF JAIL TIME 298 DAYS: FILED	
05/08/1996	AMENDED STATEMENT OF JAIL TIME 306 DAYS: FILE	
05/10/1996	JUDGMENT AND SENTENCE: FILED	
05/16/1996	OKLAHOMA DEPARTMENT OF CORRECTION RECEIPT FOR	
	PRISONER/DOCUMENTS/DETAINER RTD ATTD TRANSPORTED JOSHA	
	STUMP TO LARC BY JACK BULLARD, LCSO: FILED	
07/10/1996	CM: JUDGE VASSAR	
	STRICKEN; MOOT:	
07/30/1996	LETTER, DOC: FILED	
12/17/2002	TRANSCRIPT: FILED 1-ORIGINAL	
02/13/2004	APPLICATION FOR POST-CONVICTION RELIEF: FILED	
02/26/2004	STATE'S RESPONSE TO PETITIONER'S APPLICATION FOR POST	
	CONVICTION RELIEF: FILED	
03/01/2004	ORDER: FILED 3C	
03/11/2004	NOTICE OF POST CONVICTION APPEAL: FILED	
04/02/2004	THE CLERK OF THE APPELLATE COURTS CERTIFICATE OF	
	APPEAL: FILED	
04/05/2004	PETITION IN ERROR: FILED	\$200.00
04/05/2004	BRIEF OF APPELLANT: FILED	
04/12/2004	NOTICE OF COMPLETION OF RECORD ON APPEAL: FILED	
04/16/2004	REQUEST TO TRANSMIT APPEAL RECORDS: FILED	

04/20/2004	ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF: FILED	
		Total: \$644.00

Date	Time	Calendar Events
07/21/1995	10:00	Date Action: FURTHER ARRAIGNMENT Completed : 07/21/1995 Code: X
09/08/1995	10:00	Date Action: PRELIMINARY HEARING Completed : 09/08/1995 Code: X
11/17/1995	9:00	Date Action: PRELIMINARY HEARING CONTINUED Completed : 11/17/1995 Code: X
12/04/1995	1:30	Date Action: PRELIMINARY HEARING CONTINUED Completed : 12/04/1995 Code: X
12/13/1995	1:30	Date Action: ARRAIGNMENT CT. RM.#1 Completed : 12/13/1995 Code: X
12/20/1995	1:30	Date Action: ARRAIGNMENT Completed : 12/20/1995 Code: D
01/23/1996	9:30	Date Action: FELONY DISPOSITION DOCKET Completed : 01/23/1996 Code: X
01/19/1996		Date Action: MOTION FOR CONTINUANCE PRESENTED Completed : 01/19/1996 Code: D
01/24/1996	1:30	Date Action: MOTION FOR DISCOVERY Completed : 01/24/1996 Code: D
02/23/1996		Date Action: MOTIONS Completed : 03/23/1996 Code: D
02/23/1996	2:30 P.	Date Action: HEARING ON MATERIAL WITNESS WARRANT Completed : 02/23/1996 Code: D
03/13/1996	1:30	Date Action: MOTIONS Completed : 03/13/1996 Code: X
07/10/1996	1:30	Date Action: MOTION TO QUASH INFORMATION Completed : 07/10/1996 Code: X
07/10/1996	1:30	Date Action: MOTION TO STRIKE HEINOUS, ATROCIOUS AND CRUEL AGGRAVATING CI Compl
04/25/1996		Date Action: ST GUILTY PLEA
05/10/1996		Date Action: JUDGMENT & SENTENCE: FILED Completed : 05/10/1996 Code: X
04/12/2004		Date Action: MAIL NOTICE OF COMPLETION Completed : 04/12/2004 Code: X
04/16/2004		Date Action: MAIL APPEAL TO COURT OF CRIMIAL APPEALS Completed : 04/16/2004 Code
08/24/2005		Date Action: TAX INTERCEPT ADD Completed : 07/13/2005 Code: X
07/13/2005		Date Action: TAX INTERCEPT VOID Completed : 07/13/2005 Code: X
09/14/2005		Date Action: BEGIN
11/01/2005		Date Action: TAX INTERCEPT ADD Completed : 11/09/2005 Code: X
11/14/2005		Date Action: TAX INTERCEPT VOID Completed : 11/14/2005 Code: X

Date	Receipts	Amount
10/01/1996	95-030528 BARRETT, CURTIS LEON	\$20.00
04/13/2004	98-088995 GONZALEZ, GINGER	\$200.00
Total:		\$220.00

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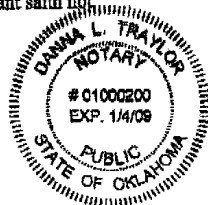
AFFIDAVIT

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

I, Jim Rabon, hereby certify: That I am the Administrator, Sentence Administration and Offender Records, Oklahoma Department of Corrections, the agency having jurisdiction over all adult correctional facilities of the state of Oklahoma; that I am the departmental authority in matters of time calculation, sentence interpretation, and offender release dates; that the following is a true and correct statement:

1. Department of Corrections' policy in OP-060203, Adjustment Review, provides that a "periodic review will be conducted to ensure all offenders are knowledgeable of their status in regards to classification, time calculation and program requirements. The facility head will ensure reviews are conducted so that the offender understands the requirements for successful progression during incarceration and the necessary steps for successful re-entry to the community." These periodic reviews are conducted at a minimum of every four months, and are documented on DOC Form 060203A, entitled, Adjustment Review. The purpose of the Adjustment Review is to formally review and evaluate the inmate's behavior, progress toward programmatic goals, participation in work or programs, earned credit level assignment, emergency contact information, parole eligibility, and current security level. The referenced policy provides that the inmate receive a copy of the Adjustment Review form, as it serves as notification to them of their progress and areas of need.
2. Notification of Parole Consideration Date is a Pardon and Parole Board form produced by staff from that agency. The form is given to an inmate as notification of their next parole consideration date and is filed in the inmate's record maintained by the Department of Corrections. The form is an open record, and inmate parole consideration dates are also available on the Department of Corrections' public web site.
3. If an inmate should lose their copy of either form, they can access the information by reviewing their file record and/or requesting another copy in accordance with OP-060212, Maintenance and Access of Offender Records.

Further affiant saith not



Jim Rabon
 Jim Rabon, Administrator
 Sentence Administration and Offender Records
 Oklahoma Department of Corrections
 3400 Martin Luther King Avenue
 Oklahoma City, Oklahoma 73136-0400
 405-425-2615
 jim.rabon@doc.state.ok.us

Subscribed and Sworn to before me this 3rd day of August 2006.

Danna L. Traylor
 NOTARY PUBLIC



163 Fed.Appx. 703, 2006 WL 122474 (C.A.10 (Okla.))

This case was not selected for publication in the Federal Reporter.

Please use FIND to look at the applicable circuit court rule before citing this opinion. Tenth Circuit Rule 36.3. (FIND CTA10 Rule 36.3.)

United States Court of Appeals,
Tenth Circuit.
Randall BERRY, Petitioner-Appellant,
v.
State of OKLAHOMA, Respondent-Appellee.
No. 05-6185.
Jan. 18, 2006.

Randall Berry, Lexington, OK, pro se.

Before KELLY, O'BRIEN, and TYMKOVICH, Circuit Judges.

ORDER DENYING CERTIFICATE OF APPEALABILITY

PAUL J. KELLY, JR., Circuit Judge.

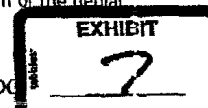
**1 Randall Berry, a state inmate appearing pro se, seeks a certificate of appealability ("COA") to appeal from the district court's denial of his habeas petition filed pursuant to 28 U.S.C. § 2241. Mr. Berry claims that the Department of Corrections violated the ex post facto clause by failing to promote him in classification levels as a result of a change in policy occurring after his disciplinary action. Mr. Berry contends that the district court wrongly dismissed his appeal as untimely. R. Doc. 9. Because Mr. Berry has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S.Ct. 1895, 146 L.Ed.2d 542 (2000), we deny a COA and dismiss the appeal.

While serving a thirty-five year sentence, a disciplinary committee found Mr. Berry guilty of battery of a staff member resulting in bodily harm, a "Class A" offense. R. Doc. 1 at Ex. 2. Mr. Berry alleges that amendments in Department of Corrections ("DOC") policy on March 19, 1996 and April 9, 1997, changed the class of his misconduct, resulting in his being held at class level two and thus has substantially lengthened his sentence. R. Doc. 1 at 5-6. Mr. Berry filed for habeas relief on March 18, 2005.

The magistrate judge recommended that the petition be dismissed as time barred pursuant to the one-year limitation period in 28 U.S.C. § 2244(d)(1)(D). R. Doc. 6. The one year limitation began to run when the factual predicate of Mr. Berry's claims could have been discovered through due diligence. 28 U.S.C. § 2244(d)(1)(D). The latest possible date Mr. Berry could have been considered aware of his claims was on December 11, 2003.^{EN1} R. Doc. 1 at Ex. *704 3. As such, the statute of limitations expired on December 11, 2004. The magistrate judge also rejected equitable tolling because Mr. Berry failed to show extraordinary circumstances justifying tolling; moreover, the lack of diligence with which Mr. Berry pursued his claims, makes equitable tolling inappropriate. See *Gibson v. Klinger*, 232 F.3d 799, 808 (10th Cir.2000).

^{EN1} We note the magistrate correctly observed that with the exercise of diligence, Mr. Berry's claims would have been known to him much earlier. We need not reach this point however, because it is clear Mr. Berry knew about his claims on December 11, 2003, and thus we need not engage in a review of Mr. Berry's diligence up to that time (or lack thereof).

Where the district court dismisses a petition on procedural grounds, a COA requires the inmate to demonstrate that it is reasonably debatable whether (1) the petition states a valid claim of the denial



of a constitutional right, and (2) the district court's procedural ruling is correct. Slack, 529 U.S. at 484, 120 S.Ct. 1595; see also Miller-El v. Cockrell, 537 U.S. 322, 337, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). The district court's procedural ruling is not reasonably debatable. We DENY Mr. Berry's application for a COA and DISMISS the appeal.
Copr. (C) West 2006 No Claim to Orig. U.S. Govt. Works C.A.10 (Okla.),2006.
Berry v. Oklahoma
163 Fed.Appx. 703, 2006 WL 122474 (C.A.10 (Okla.))

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Slip Copy, 2005 WL 1322996 (W.D.Okla.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
W.D. Oklahoma,
Bobby Dean SMITH, Petitioner,
v.
Randy PARKER, Respondent.
No. CIV-04-1685-T.
May 17, 2005.

Bobby Dean Smith, Jr., Oklahoma City, OK, pro se.
Julian S. Smith, Jr., Attorney General's Office, Oklahoma City, OK, for Respondent.

REPORT AND RECOMMENDATION

COUCH, Magistrate J.

*1 In this habeas corpus action filed pursuant to 28 U.S.C. § 2254, Petitioner, Bobby Dean Smith, challenges his state court conviction in Case No. CF-2000-1289, District Court of Oklahoma County, State of Oklahoma. Petitioner seeks modification of his sentence based upon favorable amendments to Okla. Stat. tit. 63, § 2-401 which became effective after the date of the commission of the offense for which he was convicted. Respondent has not addressed the merits of the Petition, instead contending the Petition is time barred pursuant to 28 U.S.C. § 2244(d)(1)(A) and moving for dismissal of the Petition [Doc. # 9]. Petitioner has responded to the motion [Doc. # 15] and the matter is now at issue. For the reasons set forth below, it is recommended that Respondent's motion be granted and the Petition be dismissed as untimely pursuant to 28 U.S.C. § 2244(d).

Analysis

With the enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which took effect on April 24, 1996, Congress "established a one-year period of limitations for habeas petitions." *Hoggar v. Boone*, 150 F.3d 1223, 1225 (10 Cir.1998) (citing 28 U.S.C. § 2244(d)(1)). The one-year limitations period generally begins to run from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A); accord *Preston v. Gibson*, 234 F.3d 1118, 1120 (10 Cir.2000); *Hoggar* 150 F.3d at 1225. The one-year limitations period is tolled, however, for "[t]he time during which a properly filed application for State post-conviction relief ... is pending," see 28 U.S.C. § 2244(d)(2), and may in rare and exceptional circumstances "be subject to equitable tolling." *Miller v. Marr*, 143 F.3d 976, 978 (10 Cir.1998).

Petitioner was convicted in Case No. CF-2000-1289 pursuant to a guilty plea on October 3, 2000, for attempted manufacture of a controlled dangerous substance. See Petition [Doc. # 1], ¶¶ 1-3, 6. Petitioner did not attempt to withdraw his plea within the ten-day period provided by Oklahoma law. See Rule 4.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Okla. Stat. tit. 22, Ch. 18 App. (2001) (to appeal from a conviction on a plea of guilty or nolo contendere the defendant must file an application to withdraw the plea within ten days from the date of the pronouncement of the judgment and sentence). Therefore, Petitioner's conviction became final on October 13, 2000, ten days after the pronouncement of his judgment and sentence. See *Fisher v. Gibson*, 262 F.3d 1135, 1142 (10 Cir.2001) (petitioner's guilty plea convictions were not appealed and, therefore, became final ten days after entry of the judgment and sentence) (citing Okla. Stat. tit. 22, § 1051; Rule 4.2, *Rules of the Oklahoma Court of Criminal Appeals*).

Petitioner had until October 13, 2001, within which to timely file a federal habeas petition. See 28 U.S.C. § 2244(d); see also *United States v. Hurst*, 322 F.3d 1256 (10 Cir.2003) (holding that one-year limitation period under § 2244(d)(1) expires on anniversary date of the triggering event). The instant action, filed on December 10, 2004, is untimely pursuant to § 2244(d)(1)(A), absent statutory

or equitable tolling.

*2 Before addressing the issues of statutory or equitable tolling, however, the Court must also address whether the Petition would be timely filed if governed by one of the other triggering provisions of § 2244(d)(1). Petitioner's claim for federal habeas relief is premised on a statutory amendment to Okla. Stat. tit. 63, § 2-401.^{FN1} Thus, arguably, Petitioner may contend that the limitations period is governed by the date on which the factual predicate of his claim could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1)(D).

^{FN1}. The statutory amendment reduces the minimum punishment for certain drug offenses from twenty years to seven years imprisonment.

To the extent Petitioner does rely on § 2244(d)(1)(D), it does not operate to render the Petition timely filed. The amendment to Okla. Stat. tit. 63, § 2-401 upon which Petitioner relies as a basis for habeas relief became effective on July 1, 2001. See Brief in Support of Motion to Dismiss, Exhibit 1; Okla. Stat. tit. 63, § 2-401 (2001). Assuming Petitioner had one year from the effective date of the amendment to timely file a habeas petition, the one year limitation period expired on July 1, 2002. The Petition, therefore is also untimely filed pursuant to § 2244(d)(1)(D) absent statutory or equitable tolling.^{FN2}

^{FN2}. Petitioner references, without citation, a state court decision, *Blythe v. State*, which he alleges was decided on May 27, 2004. The OCCA addressed this case in its Order Affirming Denial of Post Conviction Relief, see Petitioner's Brief in Support [Doc. # 3], Exhibit 2, and noted that the district court decision did not constitute "binding precedent." See *id.* at 3. Therefore, the *Blythe* decision does not impact the statute of limitations analysis.

Statutory Tolling

The AEDPA includes a tolling provision, 28 U.S.C. § 2244(d)(2), which provides that the one-year limitation period is tolled during the time that a properly filed application for state post-conviction relief is pending. *Habreselassie v. Novak*, 209 F.3d 1208, 1210-11 (10 Cir.2000). See also *Barnett v. Lemaster*, 167 F.3d 1321, 1323 (10th Cir.1999) (the time tolled includes all periods during which a prisoner is attempting to exhaust state post-conviction remedies). Petitioner first sought post-conviction relief on May 6, 2004. See Respondent's Motion, Exhibit 2, Docket for Case No. CF-2000-1289 at 38; Exhibit 3, Order Denying Application for Post-Conviction Relief (reciting procedural history). Applying either § 2244(d)(1)(A) or § 2244(d)(1)(D), the application for post-conviction relief was filed after the expiration of the limitations period. Therefore, statutory tolling is not available to Petitioner. See, e.g., *Fisher v. Gibson*, 262 F.3d at 1142-43 ("Fisher's petitions cannot be tolled for time spent in state post-conviction proceedings because his applications for post-conviction relief were not filed until after April 24, 1997, the end of the limitations period for convictions, like Fisher's, which became final before the effective date of AEDPA."); *Urias v. Lucero*, No. 01-2352, 2003 WL 359448 (10 Cir. Feb.19, 2003) (unpublished op.)^{FN3} ("Statutory tolling under § 2244(d)(2) was unavailable to [petitioner] because he did not engage in state post-conviction proceedings until expiration of the limitations period."). Section 2244(d)(2) therefore does not operate to render the Petition timely filed.^{FN4}

^{FN3}. This unpublished opinion is cited for its persuasive value in accordance with 10 Cir. R. 36.3(B).

^{FN4}. The record also reflects that Petitioner filed a motion for sentence modification on May 17, 2001, which was denied on June 25, 2001. See Respondent's Motion, Exhibit 2 at 32-33. Even if this motion fell under the rubric of a post-conviction or other collateral proceeding for purposes of statutory tolling under § 2244(d)(2), the thirty-nine-day period during which this motion would have tolled the limitations period is insufficient to render the Petition timely filed.

Equitable Tolling

The Tenth Circuit limits equitable tolling of the one-year limitations period to "rare and exceptional circumstances." *Burger v. Scott*, 317 F.3d 1133, 1141 (10 Cir.2003) (citing *Gibson v. Klinger*, 232 F.3d 799, 808 (10 Cir.2000)). "Equitable tolling is appropriate, for example, when a prisoner is actually innocent, when an adversary's conduct or other uncontrollable circumstances prevents a prisoner from timely filing, or when a prisoner actively pursues judicial remedies but files a defective pleading during the statutory period." *Burger*, 317 F.3d at 1141, citing *Gibson*. But equitable tolling is "only available when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control." *Marsh v. Soares*, 223 F.3d 1217, 1220 (10 Cir.2000). Giving Petitioner the most generous calculation of the limitations period and applying § 2244(d)(1)(D), Petitioner did not file the instant action until nearly two and one-half years after the expiration of the limitations period.

*3 In responding to the motion to dismiss, Petitioner has failed to demonstrate any extraordinary circumstances beyond his control that prevented him from timely filing his Petition. He alleges that he currently is unable to respond to the Motion to Dismiss due to inadequate legal resources at the correctional facility where he is incarcerated and due to his "limited learning ability." See Response [Doc. # 15] at 2. Assuming these allegation to be true, they are insufficient to toll the limitations period as they fail to address the nearly two and one-half year delay between the expiration of the limitations period and filing the Petition in the instant action. In addition, a lack of access to a prison law library or to legal counsel is insufficient grounds for equitable tolling of the limitations period. See, e.g., *Gibson v. Klinger*, 232 F.3d at 808 ("[A] claim of insufficient access to relevant law ... is not enough to support equitable tolling."); *Marsh*, 223 F.3d at 1220 (delay caused by prison inmate law clerk and law library closures does not justify equitable tolling); *Miller*, 141 F.3d at 978 ("It is not enough [for the petitioner] to say that the [out-of-state] facility lacked all relevant statutes and case law or that the procedure to request specific materials was inadequate."). Moreover, Petitioner's claims do not include allegations of actual innocence. Petitioner, therefore, is not entitled to equitable tolling, see *Marsh*, 223 F.3d at 1220, and the Petition should be denied as time-barred.

RECOMMENDATION

It is recommended that Respondent's Motion to Dismiss [Doc. # 9] be granted and the Petition be dismissed as untimely.

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to file an objection to this Report and Recommendation. See 28 U.S.C. § 636. Any objections must be filed with the Clerk of this Court by June 7, 2005. See Local Civil Rule 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir.1991).

STATUS OF REFERRAL

This Report and Recommendation disposes of all issues referred by the District Judge in this matter and terminates the referral [Doc. # 6].
Copr. (C) West 2006 No Claim to Orig. U.S. Govt. Works W.D.Okla.,2005.
Smith v. Parker
Slip Copy, 2005 WL 1322996 (W.D.Okla.)

Motions, Pleadings and Filings ([Back to top](#))

• [5:04cv01685](#) (Docket) (Dec. 10, 2004)
END OF DOCUMENT

ADJUSTMENT REVIEW

NEW ARRIVAL/ADJUSTMENT REVIEW/EARNED CREDIT LEVEL

FACILITY C.F. FACILITY ARRIVAL DATE 4-10-98 TODAY'S DATE 5-19-99 TOTAL DAYS REMAINING 26,000
LARC ARRIVAL DATE 5-16-98 PAROLE DOCKET DATE 2/2007 PFC DOCKET DATE _____
LAST REVIEW DATE 11-23-98 CASE MANAGER Cornett

INMATE IDENTIFICATION INFORMATION

Name: Jump, Joshua Number: 244572 Race: W Sex: M
In case of emergency, contact: (Is this a change?) yes no A
Name: Corlisa Card Relationship: Friend Phone: (405) [REDACTED]
Address: [REDACTED] Shawnee, OK 74101

SECURITY FACTORS

Escape History _____ Facility _____ Detainers _____ Additional _____
Check those which apply to: Previous _____ Controlling/Current _____ Consecutive _____
Drug Distribution/Trafficking _____
Racketeering _____
Robbery (3 after 1978) _____
Sex offense _____

INMATE ADJUSTMENT

Job Skills None Assignment Orderly Effective Date 4-30-99
Month/Year 4/99 Rating 39 Assignment Orderly

Performance rating: Poor, Good, Excellent, Outstanding
Staff exc Program Participation _____ Job exc good
Other inmates exc Personal Hygiene exc Living Area exc
Assessment of Needs: MRI, ABE, GED
Programs Assigned: _____
Refused _____ Waiting List MRI Participating _____ Completed _____
Comments: _____

MISCONDUCT RECORD

Class	Code	Date Occurred	Expiration Date	Misconduct Security Points
<u>1</u>	<u>8-1</u>	<u>7-28-98</u>	<u>7-28-99</u>	<u>4</u>
<u>1</u>	<u>1-3</u>	<u>10-15-97</u>	<u>10-15-99</u>	<u>11</u>
<u>1</u>	<u>2-2</u>	<u>7-23-98</u>	<u>7-23-99</u>	<u>9-11-98</u>

EARNED CREDIT CLASS DESIGNATION

Assigned Level 2 Effective Date 6-1-99 Initial Review _____ Promotion Demotion _____ No Change _____

Committee Comments: Cannot promote past 2 due to MR

Preparer Signature: [Signature] Date: 5-19-99

Inmate Signature: [Signature] Date: _____

Chairperson Comments: See notes at least (12) months before [REDACTED], apply for MRI

Chair Signature: [Signature] Date: 5-19-99

Date of Next Review: 9/99



Case 5:09-cv-00374 Document 29-3 Filed 06/09/11

Notification of Parole Consideration Date

Name: Joshua D Stump Date: 3/17/98
 Number: 244572 Facility: MAEC
 Parole Docket: February 2007

Parole docket date is based upon:

- T/S 50 percent of sentence
- T/S 75 percent of sentence
- T/S 85 percent of sentence
- One-third of the sentence
- Three or more incarcerations for three or more felonies, which requires you to serve the lesser of one-third or ten years (57 O. S. 332.7 B.)
- Three or more convictions for robbery, which requires you to serve ten years (21 O. S. 801)
- Convictions for racketeering, which requires you to serve one-half of the sentence (22 O. S. 1404)

Annual from:

- Escape return
- Waiver
- Return/rebill to parole violation
- Return from PPCS for program failure
- Last favorable consideration
- Other: _____

No docket:

- Projected discharge within 180 days
- Delayed Sentencing Program
- Sentence suspended upon program completion
- Parole violation - less than 28 months to serve
- Sentence of life without parole
- Death sentence

Denial:

- Annual
- Two Years
- Three Years
- Four Years
- Five Years
- No Redocket

Reason For This Docketing:

- | | |
|---|---|
| <input type="checkbox"/> Initial docketing _____ | <input type="checkbox"/> Detainer _____ |
| <input type="checkbox"/> Rebill _____ | <input type="checkbox"/> Appeal _____ |
| <input type="checkbox"/> Jail time modification _____ | <input checked="" type="checkbox"/> Audit _____ |
| <input type="checkbox"/> Escape redocket _____ | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Delayed CC _____ | |
| <input type="checkbox"/> CS case _____ | |

Missing Info

- Jail time _____
- FBI rap sheet _____
- OSBI rap sheet _____
- Other DANR

Comments: _____



ADJUSTMENT REVIEW

CCF ✓

NEW ARRIVAL/ADJUSTMENT REVIEW/EARNED CREDIT LEVEL

FACILITY NECF FACILITY ARRIVAL DATE 11/10/98 TODAY'S DATE 11/23/98 TOTAL DAYS REMAINING 26243
LARC ARRIVAL DATE 5/16/98 PAROLE DOCKET DATE 2/20/98 PICS DOCKET DATE _____
LAST REVIEW DATE 9/17/98 CASE MANAGER B. Allen

INMATE IDENTIFICATION INFORMATION

Name: Stump, Joshua D. Number 944572 Race white Sex male
In case of emergency, contact (is this a change?) yes # 8
Name: Debra Card Relationship friend Phone 405
Address: Shawnee, OK 76801

SECURITY FACTORS

Escape History	Facility	Detainers	Additional	Consecutive
Check those which apply in Entry Classification/Classification	Previous	Controlling/Current		
Reclassification	/	/		/
Rolling (after 1978)				
Sex offense				

INMATE ADJUSTMENT

Job Skills None Assignment U/A new Effective Date _____

Month/Year	Rating	Assignment
<u>7/98</u>	<u>38</u>	<u>Gen. Gang - MA CC</u>
<u>6/98</u>	<u>50</u>	<u>Gen. Gang - MA CC</u>
<u>5/98</u>	<u>50</u>	<u>Gen. Gang - MA CC</u>

Performance rating: Excr. Good, Excellent, Outstanding
 Staff new Program Participation new Job new
 Other Inmate new Personal Hygiene new Living Area new
 Assessment of Needs: NEW VI, GAE, CED, MKT
 Program Assigned: _____
 Refused _____ Waiting List _____ Participating _____ Completed GED
 Comments: _____

MISCONDUCT RECORD

Class	Code	Date Occurred	Expiration Date	Misconduct Society Points	Total Points	Assigned Security Level
<u>A</u>	<u>08-1</u>	<u>7/23/98</u>	<u>7/23/99</u>	<u>4</u>	<u>11</u>	<u>med</u>
<u>A</u>	<u>02-2</u>	<u>7/23/98</u>	<u>7/23/99</u>			
<u>B</u>	<u>02-1</u>	<u>3/11/98</u>	<u>3/11/99</u>			
<u>B</u>	<u>02-10</u>	<u>2/17/98</u>	<u>2/17/99</u>			

EARNED CREDIT CLASS DESIGNATION

Assigned Level L2 Effective Date 11/1/98 Initial Review ✓ Promotion ✓ Demotion - No Change -

Committee Comments _____
 Proposer Signature B. Allen Date 11/23/98
 Inmate Signature Joshua D. Stump Date _____
 Chairperson Comments _____ Date 12-1-98
 Chair Signature [Signature] Date _____
 Date of Next Review 1/99



A

Form 008-1-B
(11/93)

NOTIFICATION OF PAROLE CONSIDERATION DATE

NAME: JOSHUA D. STUMP DATE: MAY 23 1996

NUMBER: 244572 FACILITY: CCC

PAROLE DOCKET: March 2004

PRE-PAROLE DOCKET: February 2003

MANDATORY PAROLE REVIEW DOCKET: NA

Your parole docket date is based upon:

- 15 percent of the sentence plus 12 months
- 15 percent of the sentence plus 24 months
- One-third of the sentence
- One-third per Board policy (crime exempt from 15+12 and 15+24)
- Three or more incarcerations for three or more felonies, which requires you to serve the lesser of one-third or ten years (57 O. S. 332.7 B.)
- Three or more convictions for robbery, which requires you to serve ten years (21 O. S. 801)
- Conviction for racketeering, which requires you to serve one-half of the sentence (22 O. S. 1404)
- Annual from:
 - Denial
 - Escape return
 - Waiver
 - Return/rebill to parole violation
 - Return from PFC for program failure
 - Last favorable consideration
- No docket:
 - Projected discharge within 180 days
 - Delayed Sentencing Program
 - Sentence suspended upon program completion
 - Parole violation - less than 28 months to serve
 - Sentence of life without parole
 - Death sentence

Other: _____

These dates are subject to change. Written notice will be sent to you if any changes are made. If you believe that an error has been made, request Form 004-7-A from the parole investigator for your facility or the Pardon and Parole Board administrative office.

REASON FOR THIS DOCKETING:

- | | | |
|---|--------------------------------------|---|
| <input checked="" type="checkbox"/> Initial docketing | <input type="checkbox"/> Detainer | <input type="checkbox"/> Missing info |
| <input type="checkbox"/> Rebill | <input type="checkbox"/> Appeal | <input type="checkbox"/> Jail time |
| <input type="checkbox"/> Jail time modification | <input type="checkbox"/> Audit | <input checked="" type="checkbox"/> FBI rap sheet |
| <input type="checkbox"/> Escape redocket | <input type="checkbox"/> Other _____ | <input type="checkbox"/> OSBI rap sheet |
| <input type="checkbox"/> Delayed CC | | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> CS case | | |

EXHIBIT
2

PARDON AND PAROLE BOARD DOCKETING WORKSHEET

NAME Joshua D Stump DOC NUMBER 244512

CR# (00) COUNTY OFFENSE LENGTH
98-104 Lincoln Murder Sec Degree 75 yrs

RECEPTION/REBILL DATE: 5-16-96

DATE WORKSHEET COMPLETED: MAY 23 1996

RECEPTION OR REBILL 6 MONTH 96 YEAR

MINUS JAIL TIME 10 MONTHS (307 DAYS) 160M

PLUS DEAD TIME FOR 0 MONTHS

MINUS CREDIT FOR 0 MONTHS

15% DATE 5 MONTH 2002 YEAR

15/22 - 15/24 DATE 5 MONTH 2004 YEAR

ONE-THIRD DATE 8 MONTH 2010 YEAR

PAROLE DOCKET 3 MONTH 2004 YEAR

PPCS DOCKET 2 MONTH 2003 YEAR

MPRD DOCKET 1/4 MONTH YEAR

REASON FOR DOCKET 15/24

COMMENTS

PREPARED BY [Signature] REVIEWED BY

ADJUSTMENT REVIEW

NEW ARRIVAL/ADJUSTMENT REVIEW/EARNED CREDIT LEVEL

FACILITY WCC FACILITY ARRIVAL DATE 5/28/96 TODAY'S DATE 8/18/96 TOTAL DAYS REMAINING 26 (84)
LARC ARRIVAL DATE 5-18-96 PAROLE DOCKET DATE 3-2004 PPCS DOCKET DATE 2-2003
LAST REVIEW DATE 6-6-96 CASE MANAGER Dan Roberts

INMATE IDENTIFICATION INFORMATION

Name STUMP, Jashya Number 244572 Race: W Sex M
In case of emergency, contact: (Is this a change?) yes no
Name: CRISTIA CARD Relationship: Friend Phone: (405) [REDACTED]
Address: HAWKES, OK 74301

SECURITY FACTORS

Escape History None Facility _____ Detainers None Additional _____
Check those which apply to: Previous _____ Controlling/Current _____ Consecutive _____
Drug Distribution/Trafficking _____ N/A _____
Racketeering _____
Robbery (3 after 1978) _____
Sex Offense _____

INMATE ADJUSTMENT

Job Skills None Assignment ED Effective Date 8/2/96
Month/Year Rating Assignment
8-96 50 ED
8-96 28 A/C WORKMAN
8-96 47 KITCHEN
7-96 48 N/A

Performance Rating: Poor, Good, Excellent, Outstanding
Staff OS Program Participation OK Job OK
Other Inmates OS Personal Hygiene OS Living Area OS
Assessment of Needs 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Programs Assigned: _____
Refused _____ Waiting List _____ Participating 52 Completed 52
Comments: _____

MISCONDUCT RECORD

Class	Code	Date Occurred	Expiration Date	Misconduct Security Points
<u>Clean</u>				<u>9 BTRK</u>
				Total Points <u>9</u>
				Assigned Security Level <u>WORK</u>

EARNED CREDIT CLASS DESIGNATION

Assigned level 3 Effective Date 4-1-96 Initial Review _____ Promotion Demotion _____ No Change _____

Committee Comments

Preparer Signature [Signature] Date 10/18/96

Inmate Signature [Signature] Date 10/18/96

Chairperson Comments _____

Chair Signature [Signature] Date 12/18/96

Date of Next Review 2-97

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