

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOSHUAD D. STUMP,
Petitioner,
vs.
STATE OF OKLAHOMA,
Respondent.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

No. MA-2004-334 JUL 16 2004

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ORDER DISMISSING MOTION FOR RECONSIDERATION

In *Stump v. State*, PC-2004-334, (Okl. Cr. April 16, 2004)(not for publication), this Court affirmed the District Court's denial of post-conviction relief for Petitioner. On April 26, 2004, Petitioner, *pro se*, filed in this Court a Motion to Reconsider.

Once this Court has rendered a decision on a post-conviction appeal, that decision shall constitute a final order. A petition for rehearing is not allowed. Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2004). Because Petitioner has failed to properly invoke the jurisdiction of this Court, his Application should be, and is hereby, **DISMISSED**.

IT IS SO ORDERED.

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


CHARLES A. JOHNSON, Presiding Judge


STEVE LILE, Vice Presiding Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JOSHUA STUMP,)
)
 Petitioner,)
)
 vs.) Case No. CIV-05-397-R
)
 STATE OF OKLAHOMA, et al.,)
)
 Respondents.)

**MOTION TO SHOW CAUSE WHY WRIT
SHOULD NOT BE DISMISSED AS UNTIMELY**

COMES NOW the Petitioner, Joshua Stump, by and through his attorney of record, M. Michael Arnett of the Arnett Law Firm and in response to the Court's Order directing Petitioner to show cause why the Petition should not be dismissed as untimely, would show the Court as follows:

As outlined in the Petition for Writ, an Application for Post Conviction Relief was filed by the Petitioner in the District Court of Lincoln County, State of Oklahoma on February 13, 2004. Same was denied by Lincoln County District Judge Paul M. Vassar on March 1, 2004. A Petition In Error was then filed on March 31, 2004 in the Court of Criminal Appeals of the State of Oklahoma, based on the denial of Petitioner's Application for Post Conviction Relief. An Order Affirming Denial of Post-Conviction Relief was entered on the 16th day of April, 2004. It is from this Order, Petitioner submits his Petition to the Court for consideration.

It is unclear from which date the Court has determined an action in this Court should be calculated. However, Petitioner filed a Motion to Reconsider Order Affirming

Denial of Post Conviction Relief on April 26, 2004, with the Court of Criminal Appeals of the State of Oklahoma, within the statutorily permitted limits for such a filing. The Court of Criminal Appeals entered an Order Dismissing Motion for Reconsideration on July 16, 2004. Pending a final determination on the Motion to Reconsider, there was not a final, appealable Order upon which Petitioner could present his Application for Writ to this Court. It is from the July 16, 2004 date that this Court should calculate Petitioner's deadline for filing of his Writ. With the April 8, 2005 filing of the Application for Writ, Petitioner is well within his time and his Petition for Writ should be considered as timely filed. Said date is also within the one year time limit for presentation of such a Petition from the Order Affirming Denial of Post-Conviction Relief which was entered on the 16th day of April, 2004.

WHEREFORE, For the reasons and authorities cited above, Petitioner would request that this Honorable Court consider Petitioner's Petition as timely filed; provide Petitioner with the relief requested in his Writ of Habeas Corpus; and for all such other and further relief as this Court deems just, equitable, proper and/or legal.

Respectfully submitted,



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