

ORIGINAL



FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG 28 2017

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

TREMANE WOOD,)	
)	
Petitioner,)	NOT FOR PUBLICATION
)	
-vs-)	No. PCD-2017-653
)	
STATE OF OKLAHOMA,)	
)	
Respondent.)	

ORDER DENYING THIRD APPLICATION FOR POST-CONVICTION RELIEF AND RELATED MOTIONS FOR DISCOVERY AND EVIDENTIARY HEARING

Before the Court is Petitioner Tremane Wood’s third application for post-conviction relief and related motions for discovery and an evidentiary hearing. A jury convicted Wood in 2004 in the District Court of Oklahoma County, Case No. CF-2002-46, of the robbery and first degree murder of Ronnie Wipf and sentenced him to death.¹ Since then Wood has challenged his Judgment and Sentence on direct appeal² and in collateral proceedings in this Court.³ All of

¹ Wood’s jury convicted him of Count 1-First Degree Felony Murder in violation of 21 O.S.2001, § 701.7(B), Count 2-Robbery with Firearms, After Former Conviction of a Felony in violation of 21 O.S.2001, § 801, and Count 3-Conspiracy to Commit a Felony, After Former Conviction of a Felony in violation of 21 O.S.2001, § 421. The jury recommended the death penalty on Count 1 after finding that Wood knowingly created a great risk of death to more than one person, that the murder was especially heinous, atrocious, or cruel, and that Wood posed a continuing threat to society. See 21 O.S.2001, §§ 701.12(2), (4) and (7). The jury fixed his punishment on Counts 2 and 3 at life imprisonment and he was sentenced accordingly.

² This Court affirmed Wood’s Judgment and Sentence in *Wood v. State*, 2007 OK CR 17, 158 P.3d 467. The United States Supreme Court denied certiorari in *Wood v. Oklahoma*, 552 U.S. 999, 128 S.Ct. 507, 169 L.Ed.2d 355 (2007).

³ This Court denied Wood’s original and second applications for post-conviction relief in unpublished opinions. See *Wood v. State*, Case No. PCD-2005-143(Okl.Cr., June 30, 2010) (unpublished); *Wood v. State*, Case No. PCD-2011-590(Okl.Cr., Sept. 30, 2011) (unpublished).

Wood's previous challenges before this Court have proved unsuccessful. Wood presently has a habeas corpus appeal pending in federal court.⁴

Wood now claims that newly discovered evidence of a "greater risk of execution" due to his race and/or the race of the victim violates his rights under the Sixth, Eighth, and Fourteenth Amendments, and parallel provisions of the Oklahoma Constitution. Wood relies principally on the findings of Glenn L. Pierce, Michael L. Radelet, and Susan Sharp, authors of "Race and Death Sentencing for Oklahoma Homicides, 1990-2012," a draft study of the impact of race, gender, and other factors on the likelihood of capital punishment. The study was publicly released on April 25, 2017 as Appendix IA to *The Report of the Oklahoma Death Penalty Review Commission*.⁵ In his related motions, Wood requests court-ordered discovery and an evidentiary hearing to explore "whether and to what degree race—both of Wood and that of his victim—impacted" various decision makers in his case. He seeks the Oklahoma County District Attorney's office policies and procedures for seeking the death penalty; extensive race and gender data for homicides from 1990 to 2012; data for all first degree murder cases prosecuted for the same period; data for all cases from 1990 to 2012 in which the death penalty was sought; the race,

⁴ The United States District Court denied a petition for writ of habeas corpus in *Wood v. Trammell*, No. CIV-10-0829-HE, 2015 WL 6621397 (W.D.Okla. 2015). Wood's appeal of the denial of his writ of habeas corpus is pending in the United States Court of Appeals for the Tenth Circuit. See *Wood v. Royal*, No. 16-6001.

⁵ <https://drive.google.com/file/d/0B-Vtm7xVJVWONmdNMmM5bzk3Qnc/view>

gender, and names of victims in these cases; and the ultimate sentence imposed.

This Court recently rejected an almost identical claim in a second capital post-conviction appeal in *Sanchez v. State*, 2017 OK CR 22, ___P.3d___. Sanchez argued “that newly discovered evidence of a ‘greater risk of execution’ due to his race and/or the race and/or gender of the victim violates his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments, and parallel provisions of the Oklahoma Constitution.” *Id.* at ¶ 3. Sanchez relied on the same study as Wood for newly discovered evidence to support his claim. *Id.* We held that Sanchez’s claim was procedurally barred under 22 O.S.Supp.2016, § 1089(D)(8)(b)(1), (b)(2) because he neither showed that the factual basis for his claim was unascertainable through the exercise of reasonable diligence on or before the filing of his original post-conviction application nor showed that the factual basis of his current claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the improper influence of race and/or gender discrimination, no reasonable fact finder would have found him guilty or rendered the penalty of death. *Id.* at ¶¶ 8 & 11.

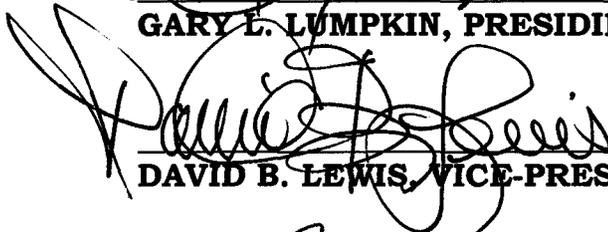
Sanchez is dispositive and controls our decision in this case. For the reasons explained in *Sanchez*, we find Wood’s claim is procedurally barred. Wood’s third application for post-conviction relief and related motions for discovery and evidentiary hearing are therefore **DENIED**.

IT IS SO ORDERED.

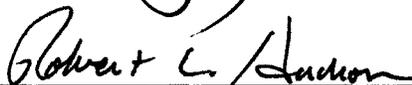
WITNESS OUR HANDS AND THE SEAL OF THIS COURT ON THIS 28th
DAY OF August, 2017.



GARY L. LUMPKIN, PRESIDING JUDGE



DAVID B. LEWIS, VICE-PRESIDING JUDGE



ROBERT L. HUDSON, JUDGE

ATTEST

John D. Hadden

Clerk