



**ORIGINAL**

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

JULIUS DARIUS JONES, )

Petitioner )

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

**NOT FOR PUBLICATION**

-vs-

SEP - 5 2017

No. PCD-2017-654

STATE OF OKLAHOMA, )

Respondent. )

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

Before the Court is Petitioner Julius Darius Jones' second application for post-conviction relief and related motions for discovery and an evidentiary hearing. A jury convicted Jones in 2002 in the District Court of Oklahoma County, Case No. CF-1999-4373, of the first degree murder of Paul Howell and sentenced him to death.<sup>1</sup> Since then Jones has unsuccessfully challenged his Judgment and Sentence on direct appeal and in collateral proceedings in this Court.<sup>2</sup> Jones too has unsuccessfully challenged his convictions and death sentence in federal habeas proceedings.<sup>3</sup>

<sup>1</sup> Jones' jury convicted him of Count 1: First Degree Felony Murder, in violation of 21 O.S.Supp.1998, § 701.7(B); Count 2: Possession of a Firearm after Conviction of a Felony, in violation of 21 O.S.Supp.1998, § 1283; and Count 3: Conspiracy to Commit a Felony, in violation of 21 O.S.Supp.1999, § 421. The jury recommended the death penalty on Count 1 after finding that Jones knowingly created a great risk of death to more than one person and that Jones posed a continuing threat to society. See 21 O.S.2001, §§ 701.12(2) and (7). The jury recommended, and the trial court sentenced, Jones to fifteen (15) years imprisonment on Counts 2, and twenty-five (25) years imprisonment on Count 3.

<sup>2</sup> On January 27, 2006, this Court affirmed Jones' Judgment and Sentence. *Jones v. State*, 2006 OK CR 5, 128 P.3d 521. On March 14, 2006, the Court granted Jones' petition for rehearing, but finding relief was not warranted denied Jones' motion to recall the mandate. *Jones v. State*, 2006 OK CR 10, 132 P.3d 1. The United States Supreme Court denied certiorari review on October 10, 2006. *Jones v. Oklahoma*, 549 U.S. 963, 127 S. Ct. 404, 166 L. Ed. 2d 287 (2006). This Court denied Jones' original application for post-conviction relief in an

Jones 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. Jones 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*.<sup>4</sup> In his related motions, Jones requests court-ordered discovery and an evidentiary hearing to explore “whether and to what degree race—both of [Jones] and that of his victim—impacted” various decision makers in his case. He seeks, *inter alia*, 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;

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unpublished opinion. See *Jones v. State*, Case No. PCD-2002-630 (Okl.Cr., Nov. 5, 2007) (unpublished).

<sup>3</sup> The United States District Court denied a petition for writ of habeas corpus in *Jones v. Trammell*, No. CIV-07-1290-D, 2013 WL 12205578 (W.D.Okla. 2013). The United States Court of Appeals for the Tenth Circuit subsequently granted Jones a certificate of appealability on the single issue of ineffective assistance of counsel, but denied Jones relief in *Jones v. Warrior*, 805 F.3d 1213 (10<sup>th</sup> Cir. 2015). On October 3, 2016, the United States Supreme Court denied Jones’ petition for certiorari review in *Jones v. Duckworth*, \_\_ U.S. \_\_, 137 S. Ct. 109, 196 L. Ed. 2d 88 (2016).

<sup>4</sup> <https://drive.google.com/file/d/0B-Vtm7xVJVWONmdNMmM5bzk3Qnc/view>

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

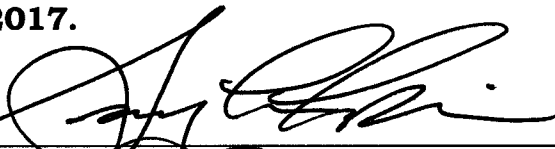
This Court recently rejected an almost identical claim in a second capital post-conviction appeal in *Sanchez v. State*, 2017 OK CR 22, \_\_\_P.3d\_\_\_. Sanchez argued “that newly discovered evidence of a ‘greater risk of execution’ due to his race and/or the race and/or gender of the victim violates 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 Jones 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.

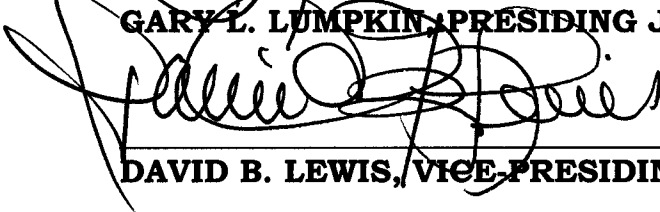
*Sanchez* is dispositive and controls our decision in this case. For the reasons explained in *Sanchez*, we find Jones’s claim is procedurally barred. Jones’s second application for post-conviction relief and related motions for discovery and evidentiary hearing are therefore **DENIED**. Pursuant to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

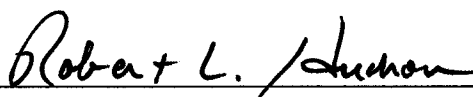
3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**IT IS SO ORDERED.**

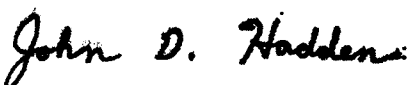
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT ON THIS 5<sup>th</sup>  
DAY OF September, 2017.**

  
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**GARY L. LUMPKIN, PRESIDING JUDGE**

  
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**DAVID B. LEWIS, VICE-PRESIDING JUDGE**

  
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**ROBERT L. HUDSON, JUDGE**

**ATTEST**

  
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**Clerk**