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FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL - 1 2022

JOHN D. HADDEN
CLERK

IN THE COURT OF CRIMINAL APPEALS
THE STATE OF OKLAHOMA

PCD 2022 589

FILED
RICHARD GLOSSIP, IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA Oklahoma County
Petitioner, JUL - 1 2022 Case No. CF-97-256
v. JOHN D. HADDEN Court of Criminal Appeals
STATE OF OKLAHOMA, CLERK Direct Appeal Case No. D-2005-310
Respondent.. Post-conviction Case No. PCD-2004-978
Post-conviction Case No. PCD-2015-820
No. _____

MOTION FOR EVIDENTIARY HEARING

Pursuant 22 O.S. § 1089(D)(5) and Rule 9.7, Rules of the Court of Criminal Appeals, Mr. Glossip requests an evidentiary hearing be held on his successive post-conviction application. In support of this request he incorporates by reference the facts plead in the application, the arguments contained in the respective propositions for relief and the supporting affidavits and documentation presented with the application, all as referenced in the statement of facts. The materials submitted show, by clear and convincing evidence, that the evidence sought to be presented at a hearing is likely to have support in law and fact and be relevant to the allegations raised in the successive application for post-conviction relief (the "Application"). An evidentiary hearing should be held as to all propositions in the Application.

Actual Innocence

This proposition requires an evidentiary hearing because it depends upon the statements

of at least 17 witnesses that are not currently in the record. Their declarations and affidavits are attached to the Application, but the court must receive their testimony in order to resolve definitively the claim of Mr. Glossip's innocence. At the hearing on this proposition, Mr. Glossip would expect to call some or all of the following witnesses:

Joseph Tapley
Paul Melton
Roger Lee Ramsey
Terry Allen Cooper
Michael Scott
Frederick Gray
Russell Paul O'Neill
Jamie Spann
Margaret Humphrey
Albert Mize
Richard Barrett
Stephanie Garcia
Pam Kerr
C. David Rhoades
Dr. Pablo Stewart
Dr. George Woods
Dr. Robert Ouau

Destruction of Evidence

An evidentiary hearing is necessary to resolve this claim because the facts are disputed as to who ordered and conducted the evidence destruction and why. While Mr. Glossip has attached several documents to his Application indicating that evidence was intentionally destroyed, and while the independent investigation report attached to the Application found, from multiple interviews, that (1) the OCPD would not have destroyed evidence without direction from the District Attorney's Office and (2) the District Attorney's Office had a policy of maintaining evidence in capital cases in perpetuity, testimony is necessary to firmly establish who is responsible for the destruction and why it occurred. A hearing is especially necessary because this claim concerns actions by members of the law enforcement/prosecution team—evidence that

is entirely unavailable to Mr. Glossip without compulsory process. Because the knowledge and intentions of state actors are relevant to the destruction of evidence claim, their testimony is indispensable. Mr. Glossip has already presented, attached to and discussed in his Application, more than enough information to establish by clear and convincing evidence that the destruction occurred, and that it must have been done upon instruction and the transfer of custody of the evidence from the District Attorney's Office. Mr. Glossip would anticipate calling as witnesses:

Det. Janet (McNutt) Hogue
Det. Bob Bemo
Gary Ackley
Connie Smothermon
Fern Smith
Master Sergeant Michael O'Leary
Lt. Bob Horn
Det. John Fiely

Ineffective Assistance of Counsel

An evidentiary hearing is necessary to resolve this claim for largely the same reason as for the innocence claim, as this claim largely addresses trial counsel's failure to seek out the very evidence now being presented. Those witnesses would be crucial for establishing prejudice from the defense's ineffective assistance, and in many cases can also confirm that they were never contacted by the defense, but could have testified if they had been. In addition, Mr. Glossip would anticipate calling his trial attorneys, who have been unwilling to voluntarily provide declarations or affidavits, as witnesses, as this Court has contemplated in *Malone v. State*, 2007 OK CR 34, ¶ 113, 168 P.3d 185, 229 ("We recognize, however, that the current state of the record does not contain any direct evidence from Malone's trial attorneys about what they did, how much they did, why they made the choices they did, *etc.* An evidentiary hearing would allow a more direct investigation of this question."):

G. Lynn Burch
Silas Lyman
Wayne Woodyard

Due Process

The claim regarding the overall unfairness of the trial will require testimony on a range of topics, including the handling of physical evidence and the conduct of the interrogations of Sneed and Glossip. Accordingly, it will require the testimony of many of the witnesses listed above, and may also include:

Dr. Richard Leo
Andrew Alvey (expert on investigation practices)

The anticipated testimony of these witnesses is consistent with the contents of the declarations and affidavits submitted with the Application, the factual allegations in the Application, and the contents of the independent investigation report by Reed Smith.

Intellectual Disability

The proposition regarding intellectual disability requires both expert and lay testimony. Two experts have submitted declarations, attached to the Application, demonstrating that Mr. Glossip's testing to date and life history are consistent with a diagnosis of intellectual disability. Indeed, neuropsychologist Dr. Robert Ouaou has reviewed the raw testing data from a WAIS-III test administered to Mr. Glossip in 2011 after his review of the prior forensic neuropsychologist's report raised a flag (due to the wide disparity between the verbal and nonverbal portions of the testing). Dr. Ouaou's recent rescoring of the raw data yielded an adjusted full-scale score of 72—within the intellectually disabled range pursuant to 21 Okl. St. Ann. § 701.10b. Attachment 23, ¶¶ 10-11. However, Dr. Ouaou also states his opinion is based on existing materials, and he would still need the opportunity to evaluate Mr. Glossip fully and

personally to complete a formal diagnosis and present the full range of available evidence to allow Mr. Glossip to meet his burden of establishing he is intellectually disabled. *Id.* ¶ 14.

At the hearing on this proposition, Mr. Glossip would seek to present the testimony of Dr. Woods and Dr. Ouaou, as identified regarding ineffective assistance of counsel, as well as the testimony of family members, former employers, and teachers who can speak to his level of adaptive functioning, potentially including:

Nancy Ogden
Lady Glossip-Drake
Syed Abbas
George Chadderdon

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Warren Gotcher', written over a horizontal line.

Warren Gotcher, OBA # 3495

VERIFICATION

I, Warren Gotcher, state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

7/1/22
Date

Warren Gotcher
Warren Gotcher, OBA #3495
OBA #3495

CERTIFICATE OF SERVICE

I hereby verify that on July 1, 2022, a true and correct copy of the foregoing Motion for Evidentiary Hearing was delivered to the Office of the Clerk of the Court to be delivered to the office of the Attorney General.

Warren Gotcher
Warren Gotcher